

Exhibit 2

LB1H9111

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 In re Terrorist Attacks on
4 September 11, 2001

03 MD 1570 (GBD)(SN)

Hearing

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5 New York, N.Y.
6 November 1, 2021
10:10 a.m.

7 Before:

8 HON. SARAH NETBURN,

9 U.S. Magistrate Judge

10 APPEARANCES

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16 -and-
KREINDLER & KREINDLER LLP
17 BY: MEGAN WOLFE BENETT

-and-
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1 (Pages 2 through 11 SEALED)

2 (In open court)

3 THE DEPUTY CLERK: Your Honor, this is in the matter
4 of In Re Terrorist Attacks on September 11, 2001, case number
5 is 03MD1570.

6 Starting with counsel for Mr. Fawcett, would you
7 please state your appearance for the record.

8 MR. GERBER: Good morning, your Honor. Michael
9 Gerber, Helen Gredd, and Gabrielle Friedman, from Lankler
10 Siffert & Wohl on behalf of Mr. Fawcett.

11 THE COURT: Good morning.

12 THE DEPUTY CLERK: Counsel for Kreindler & Kreindler.

13 MS. KIRSCH: Emily Kirsch from Kirsch & Niehaus, for
14 Kreindler & Kreindler and the witnesses. With me is Ms. Frey.
15 This is Ms. Benett, of course, from Kreindler & Kreindler, and
16 Hal Lieberman, who is cocounsel with me on this matter from the
17 firm of Emery Celli and also consulting on ethics issues.

18 THE COURT: OK.

19 THE DEPUTY CLERK: Thank you.

20 For the Kingdom of Saudi Arabia.

21 MR. KELLOGG: Good morning, your Honor. Michael
22 Kellogg, on behalf of Saudi Arabia. With me are Mark Hansen,
23 Gregory Rapawy, Andrew Shen, and Christopher Young.

24 THE COURT: Thank you.

25 Let me begin by acknowledging Mr. Lieberman's

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1 presence. I didn't realize he would be here. I was a partner
2 at the law firm of Emery Celli Brinckerhoff Abady. I left the
3 firm in 2010. Mr. Lieberman was not a partner of the firm at
4 that time, although our firm did consult with him on ethics
5 matters during the course of my time at that firm. I don't see
6 any issue, but I did want to raise that since it was news to
7 me.

8 Anyone wish to be heard? Anyone have any questions?

9 MR. GERBER: No, your Honor.

10 THE COURT: All right. So good morning to everybody.

11 We're here for the hearing on the issue related to the
12 breach of the protective order and are going to take testimony
13 this morning. As I ordered previously, the declarations that
14 were submitted in connection with this breach issue have
15 already been admitted as the direct testimony, and so we will
16 begin with cross-examination, and then we'll have an
17 opportunity for redirect.

18 I think we also discussed that we were not going to
19 have any opening arguments. I'll allow post-hearing briefing.
20 We can discuss schedules for that when we conclude with our
21 proceedings. So I think, unless there's any reason to delay, I
22 will turn to the Kingdom and ask which witness they anticipate
23 calling first.

24 MR. HANSEN: Good morning, your Honor. Mark Hansen
25 for defendant, the Kingdom. We'd like to proceed with the

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1 examination of James Kreindler.

2 THE COURT: OK. Can I ask Ms. Kirsch or Ms. Benett if
3 you could bring Mr. Kreindler, just let him know.

4 MS. BENETT: I'll bring him in.

5 THE COURT: That would be great.

6 While Ms. Benett is getting the witness, we took the
7 biggest courtroom we could find given all of the
8 COVID-compliance issues. We don't have a HEPA filter for the
9 witness here, so my understanding of the court's protocol under
10 our COVID Response Team is that the witness needs to keep his
11 or her mask on during the proceeding. So I think, Mr. Hansen,
12 I think the protocol for the court -- I apologize. I wish it
13 were otherwise, but I don't want to be in violation of a court
14 order. So I think we need to all have our masks on, given that
15 this room is a little bit smaller than what we would like and
16 given that we don't have a HEPA filter here for the witness.

17 MR. HANSEN: Of course, your Honor.

18 THE COURT: Thank you.

19 MR. HANSEN: Your Honor, with your permission, we've
20 provided an exhibit binder to the witness on the witness stand
21 and also to counsel.

22 THE COURT: OK.

23 MR. HANSEN: Those are the exhibits we may be using in
24 today's examination.

25 THE COURT: Thank you.

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1 MS. KIRSCH: Your Honor, just a quick housekeeping
2 matter, if I may?

3 THE COURT: Yes.

4 MS. KIRSCH: As your Honor knows, we had requested a
5 copy of these exhibits at the same time that they were
6 delivered to the Court on Friday, and counsel did not
7 accommodate our request, and then they were delivered just as
8 we were in the robing room a moment ago. So in the moment I
9 had to flip through them, it appears that a lot of them are
10 quite irrelevant and go way beyond the scope of this hearing.
11 I guess I'll apologize in advance that I'll need a moment to
12 look at each document as they try to introduce them, but I do
13 expect we will have many objections to the relevance and scope
14 of these documents.

15 THE COURT: My hope is that we can proceed with this
16 hearing as smoothly as possible, with giving everybody every
17 opportunity to be heard. Obviously, this is a bench hearing,
18 and so objections as to relevance may also be better raised in
19 post-trial briefings, but, certainly, you have every
20 opportunity to be heard.

21 MS. KIRSCH: Thank you, your Honor.

22 The issue really is the incredible sweeping scope that
23 this is, as we understand it from your October 4 order and
24 subsequent orders, that we are investigating this breach to
25 understand whether any of the other Kreindler attorneys, or

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1 anybody else, was involved with Mr. Fawcett's actions or had
2 knowledge. So a lot of these documents, which date back to
3 2002, 2003, we will have objections that it's not in any way
4 related to the issues of this hearing.

5 THE COURT: Thank you.

6 Mr. Kreindler.

7 THE WITNESS: Yes.

8 THE COURT: Come forward.

9 Good morning, Mr. Kreindler.

10 THE WITNESS: Good morning, your Honor.

11 THE COURT: I was explaining to everyone before you
12 arrived that I'm afraid you'll have to keep your mask on during
13 the proceeding.

14 THE WITNESS: OK. OK.

15 THE COURT: Ms. Slusher, would you swear in the
16 witness.

17 JAMES PAUL KREINDLER,

18 called as a witness by the Defendant,
19 having been duly sworn, testified as follows:

20 THE WITNESS: James Paul Kreindler.

21 THE COURT: Thank you.

22 You may be seated.

23 THE WITNESS: Thank you.

24 THE COURT: Counsel, you may begin.

25 MR. HANSEN: Thank you, your Honor.

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Kreindler - Cross

1 CROSS-EXAMINATION

2 BY MR. HANSEN:

3 Q. Mr. Kreindler, good morning.

4 A. Good morning.

5 Q. You agree that court orders are entitled to respect, don't
6 you?

7 A. Yes.

8 Q. You agree that deliberate violations of court orders is a
9 serious matter, don't you?

10 A. Yes.

11 Q. So serious that it may result in criminal sanctions?

12 A. Yes.

13 Q. We're here today because of the deliberate violation of two
14 court orders, are we not?

15 MS. KIRSCH: Objection, your Honor. I'm not sure that
16 there is a violation of the FBI order, so I object to the
17 question.

18 THE COURT: I believe that the -- why don't we proceed
19 with respect to the MDL protective order, which I think
20 everybody admits has been breached.

21 MR. HANSEN: Your Honor, in fairness, there's no
22 question that the MDL -- the MDL and the FBI had been breached
23 because the FBI had 30 days after the receipt of the transcript
24 to object, and until such time has passed, the entire
25 transcript is protected by the FBI protective order. So I

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Kreindler - Cross

1 believe it's --

2 THE COURT: That's true. That's true. Proceed.

3 BY MR. HANSEN:

4 Q. So do you want my question back, Mr. Kreindler?

5 A. Your question was, do I agree that two court orders were
6 breached?

7 Q. OK.

8 A. The first court order was breached. I did not recall the
9 30-day window you referred to, but in that's the case, then,
10 yes, both were.

11 Q. Wait a second, Mr. Kreindler, you're cochairman of the
12 plaintiffs' executive committee in this MDL case, aren't you?

13 A. Yes.

14 Q. And you are telling us even today, as we sit here going
15 through serious violations of protective orders, you're not
16 even familiar with the terms of the FBI protective order?

17 A. I'm very familiar with the terms.

18 Q. SO you're not familiar with the 30-day window for the FBI
19 to object?

20 A. I did not remember it now, whether it was 30 days or a
21 different period. My focus was on the breach of the first
22 court order.

23 Q. You're telling us you didn't even read the FBI protective
24 order before coming here to testify today?

25 A. I read it when I signed it, but I did not read it recently.

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Kreindler - Cross

1 Q. So, Mr. Kreindler, continuing on, your firm has admitted
2 that these violations of two court orders were committed by
3 Kreindler & Kreindler, correct?

4 A. Yes.

5 (Continued on next page)

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Kreindler - Cross

1 BY MR. HANSEN:

2 Q. Your researcher, John Fawcett, leaked a confidential
3 transcript to Michael Isikoff of Politico, according to
4 Kreindler & Kreindler, correct?

5 A. I don't think Michael Isikoff was in Politico.

6 Q. You're absolutely right. I apologize. Bad question. Let
7 me rephrase that.

8 Your firm Kreindler & Kreindler has told the court
9 that your researcher, John Fawcett, leaked a confidential
10 transcript to Michael Isikoff of Yahoo?

11 A. Yes.

12 Q. Isn't it true that Mr. Fawcett did that because you wanted
13 him to do that?

14 A. No, that is not true at all.

15 Q. So, let's get into some basics about you and your firm and
16 how we came to be here today, Mr. Kreindler.

17 You are the partner in charge of the 9/11 case at
18 Kreindler & Kreindler?

19 A. Yes.

20 Q. And I believe we mentioned a minute ago you are the co-lead
21 of the Plaintiffs' Executive Committee in this case?

22 A. Yes.

23 Q. You have a team of Kreindler & Kreindler professionals
24 working with you?

25 A. Yes.

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Kreindler - Cross

1 Q. That includes Mr. Fawcett?

2 A. Yes.

3 Q. The team is about ten or so in size?

4 A. No. I could tell you the members of the team.

5 Q. Sure. Please do.

6 A. So, Andrew Maloney, who we all call Duke, has been working
7 on the case for many years. Steve Pounian joined the team when
8 JASTA was passed. And about the same time Megan Benett has
9 also joined the team. And John has been working on 9/11 for
10 almost 20 years, John Fawcett.

11 Q. Was Ms. or Mr. Simpson also part of your team?

12 A. Recently Gavin Simpson, yes, in the last couple of months.

13 Q. Ms. or Mr. Pagan?

14 A. She is a paralegal that we asked to help out, but fairly
15 recently.

16 Q. Mr. or Ms. Sienski?

17 A. Yes. Julia is client liaison.

18 Q. And Mr. or Ms. Ranieri?

19 A. Lisa Ranieri has been a secretary to the firm for probably
20 three decades, and is Steve Pounian's secretary.

21 Q. So, the team members on the 9/11 case all worked for you,
22 didn't they, Mr. Kreindler?

23 A. Well, that's not how I'd put it. For example, Lisa is
24 Steve's secretary, so when Steve needed secretarial work he
25 would ask his secretary to do it. I had very few occasions to

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Kreindler - Cross

1 ask Steve's secretary to do something. I might ask my
2 secretary.

3 Q. Good qualification. Putting aside assistants, isn't it
4 true that all of the professionals at Kreindler & Kreindler
5 working on the 9/11 case were under your supervision?

6 A. Yes.

7 Q. And you are responsible for supervising that team, aren't
8 you?

9 A. Yes.

10 Q. Is it fair to say you set an example for your team?

11 A. Yes.

12 Q. Is it fair to say they watch what you say and do?

13 A. I hope so.

14 Q. And they follow your lead?

15 A. I believe so.

16 Q. So, Mr. Kreindler, you believe there is a lot of money at
17 stake in this case, don't you?

18 A. There is, undoubtedly.

19 Q. And your firm represents your clients on a contingency
20 basis, isn't that true?

21 A. Yes.

22 Q. And you have told the press in one of your many press
23 statements that you believe this case is -- and I am quoting
24 here -- the biggest case ever. Do you recall saying that?

25 A. Yes.

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Kreindler - Cross

1 Q. And you would like to have a settlement in this case,
2 wouldn't you?

3 A. Yes.

4 Q. Because a settlement would produce a substantial amount of
5 money for your clients, but also for the lawyers working on the
6 case, correct?

7 A. It would.

8 Q. How much of any settlement would the legal team get in
9 total, roughly, a third?

10 A. No. Our retainer fees are significantly less than a third.
11 They are 15 percent retainer fees. Many of the cases, other
12 local lawyers who brought the cases to us will receive a
13 portion of that 15 percent.

14 Q. We agree, do we not, there could be a lot of money at stake
15 for Kreindler & Kreindler.

16 MS. KIRSCH: I would like to put an objection here.
17 We are a little bit away from the scope, but also any more
18 specific terms of retainer agreements should be subject to
19 privilege. So I would just caution the witness not to give too
20 much detail into those arrangements.

21 MR. HANSEN: Your Honor, I am moving on.

22 THE COURT: Very well.

23 BY MR. HANSEN:

24 Q. Just to conclude on that topic, Mr. Kreindler, we can all
25 agree there could be a lot of money in this for Kreindler &

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Kreindler - Cross

1 Kreindler, right?

2 A. For all of the lawyers, sure.

3 Q. So, Mr. Kreindler, you have been making public statements
4 about this case for years to put settlement pressure on the
5 defendants, haven't you?

6 MS. KIRSCH: I am going to object one more time. We
7 can stipulate right here and now that Mr. Kreindler talks to
8 the press. That's not related to whether there would be any
9 motive or opportunity or anything of the kind to violate a
10 court order.

11 So if we can just cut through a lot of this, we can
12 stipulate Mr. Kreindler talks to the press about the case.
13 It's a matter of great public importance. He is the face of
14 the case. That happens. That has nothing to do with why
15 somebody would or would not violate the court order. It's not
16 relevant.

17 MR. HANSEN: It has everything to do with the case.
18 As I believe we will demonstrate, Mr. Kreindler's press
19 strategy is exactly the reason why we have protective order
20 violations, and I expect to be able to demonstrate that. It's
21 cross-examination, your Honor.

22 THE COURT: The objection is overruled. I think that
23 this goes to motive as well as modus operandi.

24 MR. HANSEN: I am not sure there was an answer to my
25 last question. Can the reporter let me know if there was an

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Kreindler - Cross

1 answer and read it back, please.

2 (Record read)

3 A. I would say to put pressure on the defendant Saudi Arabia,
4 yes. The form of a resolution may or may not be what we
5 traditionally think of as a settlement.

6 Q. Mr. Kreindler, I am not going to go into this in detail.

7 Mr. Kreindler, you speak on the record for attribution
8 to reporters, correct?

9 A. Yes, I do.

10 Q. You also speak to reporters about this case off the record,
11 correct?

12 A. I don't think so. I don't recall a time when I have ever
13 said to a reporter, I am speaking to you off the record.
14 Whether I am quoted by that reporter is up to the reporter.

15 Q. So, you're telling us here today under oath that you never,
16 in the past 20 years, have spoken to any reporter off the
17 record about the 9/11 case?

18 A. I don't recall ever doing so, and that's not the way I
19 would deal with the press. I tend to say things that are
20 public, and I'm glad to have them public.

21 Q. Mr. Kreindler, obviously, you make these statements about
22 the 9/11 case to the press because you think they are helpful
23 to the case or you wouldn't make them, correct?

24 A. Of course.

25 Q. Now, let's talk about the lines you know you're not

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Kreindler - Cross

1 supposed to cross in litigating your case in the press.

2 You are bound by two separate court orders not to
3 reveal or disclose the contents of protected material, correct?

4 A. That's correct.

5 Q. The first is the MDL protective order issued by Judge Casey
6 in 2006?

7 A. Yes.

8 Q. I would like to put up Exhibit 2 on the screen so we can
9 get oriented.

10 It's in your binder at Exhibit 2, Mr. Kreindler.

11 A. Is it the same thing that's on the screen?

12 Q. Yes.

13 A. I will look at it right there.

14 Q. You are familiar with that order?

15 A. I am, yes.

16 Q. You read it?

17 A. I certainly read it when I signed it many, many years ago.

18 Q. Under this order, you cannot disclose or talk to the press
19 about anything that's been designated confidential, correct?

20 A. Correct.

21 Q. Let's go to the second protective order in the case.

22 There was a second protective order entered by the
23 Honorable Sarah Netburn in 2018 relating to the FBI production
24 of materials, correct?

25 A. Yes.

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Kreindler - Cross

1 Q. I will put that up on the screen as Exhibit 15.

2 You're familiar with that order, correct?

3 A. Yes.

4 Q. That was an order requested by our United States Federal
5 Bureau of Investigation to cover information that the FBI has
6 decided cannot be disclosed because disclosure would harm the
7 U.S. public interest, correct?

8 A. I think it was requested by the Department of Justice, not
9 the FBI directly.

10 Q. Thank you for that clarification.

11 The Department of Justice has made that representation
12 to the court, correct?

13 A. Yes.

14 Q. And this order means that you cannot disclose or talk to
15 the press about anything that's been designated confidential
16 under the terms of this protective order, correct?

17 A. Yes.

18 Q. And just to be clear, and I know we had a little bit of
19 confusion about this earlier, all 600-plus pages of the
20 al-Jarrah deposition transcript was confidential both under the
21 MDL protective order and the FBI protective order, correct?

22 A. I don't recall the number of pages in the deposition, and I
23 don't recall if there was any small portion that wasn't
24 confidential, but certainly all of the substance was marked
25 that way.

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Kreindler - Cross

1 MR. HANSEN: I am having a hard time hearing. Can we
2 read back the answer.

3 (Record read)

4 Q. Mr. Kreindler, I am a little curious. This is a very
5 serious matter, the proceeding we are on here today, and you
6 are telling us you don't know sitting here today whether the
7 al-Jarrah deposition transcript was confidential under both
8 orders?

9 A. I said I knew all of the substance was confidential, but I
10 didn't remember at the time whether there was something
11 innocuous that wasn't confidential.

12 Q. If it was designated confidential, who decides whether it's
13 innocuous so that it wouldn't be covered by the order?

14 A. There is a misunderstanding. I knew that the deposition
15 was certainly by and large confidential. There might have been
16 a page or two that wasn't confidential. That's all I'm saying.
17 I knew -- the deposition was confidential. Whether there was
18 some innocuous page or two of background that wasn't, I didn't
19 recall. But I checked on that.

20 Q. Did you check?

21 A. Yes.

22 Q. So you know it's all confidential, right?

23 A. Yes.

24 Q. So part of your press strategy, Mr. Kreindler, is to tell
25 reporters that these two court orders that you told us a few

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Kreindler - Cross

1 minutes ago were entitled respect, are -- and I am quoting your
2 words here -- "gag orders," in quotes, and "disgusting," in
3 quotes, isn't that right?

4 A. Yes.

5 Q. It's part of your stump speech, isn't it?

6 A. I would not call it a stump speech. I would call it my
7 heartfelt belief.

8 Q. Let's get some of the statements. Then I am going to ask
9 you what you think your team learns from your statements.

10 You have called the courts' orders "these disgusting
11 protective orders imposed upon us by the Department of Justice
12 with the blessing of the court," correct?

13 A. Yes.

14 Q. You have talked about this "hated protective order" and
15 "these protective orders that we hate," correct?

16 A. I remember the first quote. I don't remember that quote,
17 but I would agree with that.

18 Q. You have said "you are angered and disgusted with the
19 protective orders that the FBI and Saudi Arabia have insisted
20 on," correct?

21 A. Yes.

22 Q. And just recently, in a podcast of Mr. Isikoff, you called
23 the protective orders "a damn gag order imposed on us by the
24 Saudis, our Department of Justice, and the court," correct?

25 A. Yes.

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Kreindler - Cross

1 Q. Would it be fair to say, Mr. Kreindler, that every member
2 of your team is aware of the contempt you have for these court
3 orders?

4 MS. KIRSCH: I am going to object, your Honor, to
5 that, and ask Mr. Hansen to rephrase the question. Obviously,
6 contempt has a legal implication. It's an improper question.

7 THE COURT: You may rephrase the question.

8 MR. HANSEN: Sure.

9 Q. Mr. Kreindler, would it be fair to say your statements
10 reflect contempt for the courts' orders?

11 MS. KIRSCH: Same objection.

12 THE COURT: Counsel, can you ask the question without
13 using the word "contempt."

14 MR. HANSEN: Sure.

15 Q. Mr. Kreindler, would you agree with me that these orders
16 communicate to your team and everybody else that you lack
17 respect for these court orders?

18 A. It's not a -- I would not say I lack respect. I would say
19 that every lawyer representing the victims dislikes the fact
20 that we are under these orders and looks forward to these
21 orders being lifted, or largely lifted. But I would not use
22 the word lack of respect. It is the court orders that we have
23 to live with until they are changed.

24 Q. What kind of message do you think is sent to your team to
25 have the leader of the team call two court orders disgusting

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Kreindler - Cross

1 gag orders?

2 A. The message is very clear. We all hate the orders, but we
3 have to live with them until they are lifted soon, and
4 hopefully soon is very soon.

5 Q. Let's talk about that.

6 In truth, Mr. Kreindler, you use these court orders as
7 a tactical weapon in your press strategy, don't you?

8 A. I would not say I use it as a tactical weapon. I am
9 offering my view of the orders that we wish we didn't have.

10 Q. Let me make my question a little clearer.

11 Your modus operandi, if you will, is to hint to the
12 press that there is this great evidence that you have but can't
13 fully reveal, correct?

14 A. Not hint. I say it outright. There is important evidence
15 of Saudi government involvement with al Qaeda that I am not
16 permitted to share with our clients, the family members, the
17 press or the public.

18 Q. And you hint at what that evidence is and no one can
19 correct you because the evidence is all sealed, correct?

20 A. Incorrect. I don't hint at it at all. I am always clear
21 in saying there is, I believe, very important, very dramatic
22 evidence of what Saudi government officials did, but until
23 these orders are lifted, I can't tell the families what that
24 is, the press or the public.

25 Q. Let's see what you have actually told the press and the

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Kreindler - Cross

1 public and whether you have done what you have said.

2 Going back a minute, you say you want to have these
3 orders lifted, correct?

4 A. Correct.

5 Q. The MDL order has been in place since 2006, correct?

6 A. That's right.

7 Q. The FBI protective order has been in place since 2018,
8 correct?

9 A. Yes.

10 Q. And you have made numerous statements saying you were going
11 to get these orders lifted so you can get all this evidence to
12 the world, correct?

13 A. Yes. Exactly what Joe Biden did a month ago.

14 Q. In fact, Mr. Kreindler, let me be very clear about this,
15 you have never, not once, filed one single motion with this
16 court to lift either the MDL order or the FBI order, isn't that
17 true?

18 A. Yes, that's absolutely true.

19 Q. Isn't it true, Mr. Kreindler, that you sought the entry of
20 the FBI protective order?

21 A. We sought the entry of it?

22 Q. Let's put up Exhibit 14. Didn't your firm tell the court
23 that you supported the entry of the FBI protective order?

24 Take as long as you want to look at it.

25 A. I only see the caption here.

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Kreindler - Cross

1 Q. If you want to look at the whole document, it's Exhibit 14.

2 We can go to the last page which cuts to the chase.

3 "For all of the foregoing reasons, the PECs
4 respectfully submit that the Court should overrule Dallah
5 Avco's objection to the proposed protective order, and promptly
6 enter the protective order in the form submitted jointly by the
7 United States and PECs, so that the FBI production can proceed
8 without delay."

9 Here is my question.

10 Are you aware, Mr. Kreindler, that your partner
11 Mr. Maloney signed this letter to the court requesting that the
12 court enter this hated, disgusting protective order?

13 MS. KIRSCH: Your Honor, I have an objection here.
14 This goes to the legal strategy of how this case is being
15 litigated, not even only by Mr. Hansen but by other partners at
16 his firm, and also the other PECs. The steps that are taken,
17 the motions that are taken, all of that is the subject of work
18 order and strategy, and delving into why decisions were made is
19 entirely improper in this hearing.

20 THE COURT: Your objection is overruled.

21 A. Can I answer the question?

22 THE COURT: Yes, please.

23 A. The operative phrase is "so that the FBI production can --"

24 Q. Can you please answer my question? You can explain when
25 your counsel examines you.

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Kreindler - Cross

1 Didn't you ask the court to enter this protective
2 order, yes or no?

3 MS. KIRSCH: I am going to make the same objection
4 here, your Honor.

5 THE COURT: Your objection remains overruled.

6 Q. Yes or no, Mr. Kreindler?

7 A. Yes. That's exactly what the document says.

8 Q. OK, Mr. Kreindler.

9 You'd rather make inflammatory and misleading
10 statements to the press about protected information, when your
11 statements can't be proved false, isn't that right?

12 A. Absolutely wrong. I have never made incorrect or
13 inflammatory statements. I have done my best to say truthfully
14 what I am permitted to say, my honest opinion, and not reveal
15 anything I am not permitted to reveal until such time as I am
16 permitted to reveal it.

17 Q. We know, do we not, Mr. Kreindler, that you violated the
18 protective order in 2017 doing exactly the opposite, right?

19 A. That I personally did? I personally did not. There was a
20 violation found two and a half years ago by the court.

21 Q. You didn't read the court's October 21 order that says, in
22 these very words, James Kreindler violated the protective order
23 in 2017? You didn't bother to read the court's order?

24 A. Which order?

25 Q. A recent order in this case, October 21, just a few days

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1 ago, in a court order issued by this court, the court said,
2 James Kreindler violated the protective order.

3 MS. KIRSCH: Your Honor, the record stands on its own.
4 I don't think this is an appropriate line of questioning. The
5 2017 transcript says what it says. Your Honor's October 21st
6 order says what it says.

7 THE COURT: I agree. Let's move on.

8 Q. The court warned you, Mr. Kreindler, in 2017 that it was
9 really -- I am quoting here -- "really unfair to the parties,
10 who will be turning over a lot of confidential and personal
11 information, to have those documents portrayed in the light
12 that has a particular viewpoint."

13 That's the transcript of the 2017 hearing at page 9.
14 Were you in court and heard that warning?

15 MS. KIRSCH: Your Honor, again, first of all, it says
16 what it says, and it's a transcript of this court's proceeding.
17 It's not appropriate and that objection was just sustained.

18 Second of all, if Mr. Hansen would like to read
19 something into the record, we would respectfully request that
20 he point us to the document and show it to Mr. Kreindler.

21 THE COURT: I am going to allow Mr. Hansen to ask some
22 questions related to prior instances where the court has found
23 that there have been breaches of the protective order. I don't
24 want this entire hearing to be about the events of the past.

25 To the extent, Mr. Hansen, you have a copy of the

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1 transcript.

2 MR. HANSEN: I do. It's Exhibit 10. We will put it
3 up on the screen.

4 BY MR. HANSEN:

5 Q. Do you recall being present and hearing that warning from
6 the court, Mr. Kreindler?

7 A. Yes.

8 Q. That's what you were doing in 2017 when you and Mr.
9 Fawcett, in a tag-team fashion, violated the court's protective
10 order?

11 A. No, that's incorrect.

12 Q. Let's see what happened in 2017 and whether it bears a
13 remarkable similarity to what happened this past summer.

14 In early 2017, you gave an interview to a journalist
15 named Caleb Hannan of Politico Magazine, correct?

16 MS. KIRSCH: I object again, your Honor. That was in
17 2017. The scope of this hearing is whether there was any
18 involvement in this breach, that Mr. Fawcett leaked the
19 transcript in connection with a July 15th article. What
20 happened in 2017 was obviously fully litigated. We obviously
21 have a decision as to what happened, and quite frankly, I think
22 this is an improper line.

23 THE COURT: I am going to allow this line of
24 questioning. I do think it lays a reasonable foundation for
25 the issues that are presented here.

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1 I will ask, Mr. Hansen, to move with some alacrity.

2 MR. HANSEN: I am trying, your Honor, but I believe
3 these long talking objections are going to take a lot of our
4 time up. I will try and move quickly to make the point.

5 BY MR. HANSEN:

6 Q. Mr. Hannan in 2017, in his article, described in detail the
7 confidential document that had been produced by a party in this
8 litigation subject to confidentiality protection, correct?

9 A. No, incorrect.

10 Q. Let's take a look at it. In the article, at Exhibit 11,
11 the top of page 8 -- by the way, this is an article you
12 reported in repeatedly?

13 A. Yes.

14 Q. Mr. Hannan describes -- first he talks about how you looked
15 at thousands and thousands of pages of these confidential
16 documents from the Bayoumi organization. And he writes,
17 "There, at the top of the single page, it found a note from
18 Khaleid Sowailem written on official letterhead from the
19 ministry. On that note was Sowailem's phone number at the
20 Saudi Embassy in Washington, D.C."

21 Do you see that?

22 A. Yes.

23 Q. You provided that information to Mr. Hannan, didn't you?

24 A. I did not, no.

25 Q. You did it by directing John Fawcett to provide that

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1 information to Mr. Hannan, didn't you?

2 A. No.

3 Q. The only people from Kreindler & Kreindler who talked to
4 Caleb Hannan were you and John Fawcett, correct?

5 A. That's correct.

6 Q. So, if he got that information, he had to have gotten it
7 either from you or John Fawcett, correct?

8 A. Yes.

9 Q. Now, after the court found a violation of the protective
10 order in 2017, you didn't fire John Fawcett, did you?

11 A. Correct.

12 Q. You didn't discipline him in any way, correct?

13 A. I spoke to him about what happened.

14 Q. Did you discipline him in any way?

15 A. Discipline him? I really don't know what you mean. We did
16 not fire him, and I certainly didn't spank him. We talked
17 about it and how to make sure that that sort of thing doesn't
18 happen again.

19 Q. You consider that discipline?

20 A. It's your word. That's not a word I would pick.

21 Q. You didn't cut off Mr. Fawcett's employee log-in access to
22 every single confidential document in the 9/11 case, which he
23 had at that point, correct?

24 A. Correct.

25 Q. By the way, up until September 27th of this year, John

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1 Fawcett had employee log-in privileges that gave him full and
2 unfettered access to every single 9/11 case document, correct?

3 A. Yes. He is at the heart of the documents.

4 Q. In fact, not only that, he continued up until September of
5 this year to be the Kreindler & Kreindler professional
6 responsible for managing the entire document collection of
7 confidential documents at Kreindler & Kreindler, correct?

8 MS. KIRSCH: I am going to object. It's a leading
9 question, obviously, but this is attorney work product. I
10 don't think this is a proper line of questioning either. It
11 has nothing to do with what happened, that we know what
12 happened with Mr. Fawcett, and how Kreindler & Kreindler
13 manages its internal work is not relevant here.

14 THE COURT: I don't think the responsibilities of Mr.
15 Fawcett fall within the parameters of work product. And,
16 certainly, the role that Mr. Fawcett played at the firm, his
17 responsibilities, his access to information, is at the core of
18 this hearing. So I am going to allow this line of questioning.

19 MS. KIRSCH: Just to be clear, we stipulate that he
20 had access to all of the confidential information. That's not
21 a matter that's in dispute.

22 THE COURT: Thank you.

23 BY MR. HANSEN:

24 Q. I am sorry. Did you have a chance to answer the question,
25 Mr. Kreindler?

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1 A. I think your question was, did John have access to all the
2 information?

3 Q. I am sorry. Before the objection I had a different
4 question. You agreed he had access to all information.

5 My next question was, up until and possibly beyond
6 September 27, 2021, John Fawcett was the Kreindler & Kreindler
7 professional responsible for managing the entire 9/11 case
8 document collection, wasn't he?

9 A. Yes.

10 Q. Even while you were doing an investigation of him for
11 potentially leaking the transcript, right?

12 A. No, that's not right, not on September 17.

13 Q. We will get into the investigation in a minute.

14 So you never investigated John Fawcett at any time
15 between July 15 and September 27, more than two months later?

16 A. Investigate him? No, I did not investigate him. I spoke
17 to him.

18 Q. OK. We will get to that in a minute.

19 After the 2017 protective order violation, you didn't
20 even direct Mr. Fawcett to stop talking to the press, did you?

21 A. No.

22 Q. And he did talk to the press as part of his Kreindler &
23 Kreindler duties, correct?

24 A. Yes.

25 Q. And he billed for his time doing that, correct?

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1 A. I don't know. That I don't know.

2 Q. Well, he put in billing records, like your associates do,
3 for the time he spent working on the case, and got paid for it,
4 correct?

5 A. I think so, yeah.

6 Q. Do you think he also included all his press duties as part
7 of his billable time?

8 MS. KIRSCH: Objection. Calls for speculation. He
9 just said he didn't look at the time records.

10 A. I don't know.

11 THE COURT: Sustained.

12 Q. In fact, you knew that he was, among other things,
13 entertaining reporters at the Kreindler & Kreindler offices,
14 correct?

15 A. He was not entertaining reporters. He would speak to
16 reporters on occasion when I asked him to.

17 Q. And he did that at the Kreindler offices?

18 A. Yes.

19 Q. And he provided reporters with documents, correct?

20 A. Over 20 years, he made sure that if he provided a document
21 to a reporter, it was not under either of the orders we have
22 been talking about. In other words, if a reporter wanted
23 information, he would go through material and provide only that
24 which he is permitted to provide.

25 Q. Well, we know that's not true because, according to you, he

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1 provided a sealed transcript to reporters. Would you like to
2 retract your prior answer?

3 A. I thought you were talking about up until this past
4 September.

5 Q. Let me clarify.

6 You have agreed that he does, as part of this
7 Kreindler & Kreindler duties, talk to reporters and provide
8 documents to reporters? And exactly what the documents are we
9 will get into in a minute. Correct?

10 A. Not correct fully. He provides material when I or one of
11 my partners would ask him to provide material that is public.

12 Q. So, for example, in June of this year, he invited NPR
13 reporter Laura Sullivan to come to the Kreindler offices so he
14 could brief her in advance of you giving quotes to the reporter
15 for a story, correct?

16 A. No, you have the chronology wrong.

17 MR. HANSEN: I am going to put up Exhibit 12, your
18 Honor, which I believe has been produced in this matter.

19 Q. Do you know who Laura Sullivan is?

20 A. I do, yes.

21 Q. Who is she?

22 A. Laura Sullivan is an NPR reporter who I first met in
23 Washington, D.C. and gave her a pretty lengthy interview.

24 Q. Were you aware that in June of this year, Mr. Fawcett was
25 inviting Ms. Sullivan to come to the Kreindler offices so that

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1 he could have discussions with her?

2 MS. KIRSCH: Your Honor, could I have a moment to read
3 the document, please? I didn't get this previously.

4 THE COURT: Sure. Let me know when you're ready.

5 A. May I answer now?

6 Q. Yes.

7 A. John did not invite her. I told her that, as a follow-up
8 to my talk with her, she should contact John to see the
9 documents that we are permitted to show her and members of the
10 press. And then you have this e-mail about the time she would
11 be at the office. But John is not doing this of his own
12 volition, his own initiative.

13 Q. This is in June of 2021. Are you aware that Mr. Fawcett
14 was doing this, as indicated in this chat, in June of this
15 year?

16 A. Yeah. I put the two of them in contact so she could follow
17 up and see public documents after the interview I did with her.

18 Q. Mr. Fawcett did it again in September of this year, less
19 than two months ago, after the leak of the confidential
20 transcript, correct?

21 I am directing you still to Exhibit 12.

22 MS. KIRSCH: I don't know what is meant by "did it
23 again."

24 MR. HANSEN: I will rephrase the question.

25 Q. Were you aware -- and directing your attention to Exhibit

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12 -- that Mr. Fawcett had further discussions with Ms. Sullivan about the 9/11 case? And I am directing you to the September entries on page 4.

A. Is that what I have in front of me now?

Q. We will put it up on the screen.

A. OK. I was aware that Laura Sullivan was coming back to see more documents that we were permitted to show, yes.

Q. So he was doing this at your direction?

A. Yeah.

Q. If you look down toward the bottom of the page, there is a reference to, "Megan says no problem for those two documents"?

A. Yes.

Q. So, would it be fair to say that Mr. Fawcett followed the practice of checking with a Kreindler & Kreindler partner before he released documents to a reporter?

A. He certainly did here. Over 20 years, I can't say that that was the procedure for every time John would show public documents to a reporter, but he certainly did here. And what I am trying to get at is, particularly after the 2017 violation that the court found, we always went to great pains to make doubly sure that every document we are showing one of the family members or a reporter was the public version and not the prohibited version. So that's what happened here.

Q. Just to be clear, you just made a reference to the 2017 violation. You were aware, were you not, that the court gave

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1 you a warning in 2017 and said -- we will put it up, Exhibit
2 10, page 9. The court wrote, after not imposing a sanction,
3 the court wrote, "Going forward, Mr. Kreindler, to the extent
4 you are going to be continuing to speak to the press, or any
5 other lawyer in this case, I expect the parties to hew much
6 more closely to the confidentiality order and to be exceedingly
7 discreet in the information they reveal."

8 You were present in court and heard that warning,
9 didn't you?

10 A. Yes.

11 Q. But you kept right on talking to the press about the case
12 after that, didn't you?

13 A. Of course.

14 Q. When you did speak, you were not discreet at all, were you?

15 A. I disagree with that.

16 Q. Let's look at some of the speeches you made in public after
17 you got that warning.

18 Were you exceedingly discreet in your public
19 statements at Dartmouth College in 2019?

20 MS. KIRSCH: Your Honor, I object to this line of
21 questioning. We know that Mr. Kreindler speaks to the press.
22 We have stipulated to that. If there was something that was
23 leaked, it has been brought to this Court, it has been
24 discussed. If there was something inappropriate, it has been
25 brought to the Court's attention. It's not relevant to this

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1 breach. And this is not an opportunity to relitigate matters
2 that have been annoying to the Kingdom in the past.

3 THE COURT: I would object then to the concept of it
4 being annoying to the Kingdom. It's a violation of the court
5 orders. It is a violation of the court orders when these
6 protective orders are breached. It's not the Kingdom that is
7 annoyed; it's the court whose orders are being violated. So,
8 first, I would not consider this to be something about what is
9 annoying the Kingdom.

10 With respect to the historical facts, I have limited
11 discovery on these issues. I do think that we are making a
12 foundation here. I am going to allow Mr. Hansen to continue
13 this line of questioning, as I have already indicated. I am
14 watching the time. I am hoping that we are going to get to the
15 heart of the matter shortly, but I do think this line of
16 questioning is appropriate and lays a reasonable foundation for
17 the heart of the issues.

18 MS. KIRSCH: Your Honor, just to clarify, I agree a
19 hundred percent that violation of the court order is a very
20 serious matter. I was referring to Mr. Kreindler's Dartmouth
21 speech, which was not a violation of the court order, and
22 that's why I said what I said. I was not trying to minimize
23 that we are here on this breach of this court order, and it is
24 a very serious matter.

25 THE COURT: Thank you.

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Kreindler - Cross

1 BY MR. HANSEN:

2 Q. Mr. Kreindler, my question before your counsel's objection
3 was about whether you believed you were exceedingly discreet in
4 your public statements at Dartmouth College. Do you believe
5 you were?

6 A. I believe I was exceedingly appropriate.

7 Q. No, no. The question was exceedingly discreet. Will you
8 answer my question? It's a yes or no question.

9 A. If we understand discreet the same way, yes.

10 Q. Let's play some of your statements to Dartmouth College on
11 the screen, and we will talk about whether you have violated
12 the protective order there and whether these were discreet
13 comments.

14 (Audio played)

15 MS. KIRSCH: Your Honor, I have another objection. No
16 exhibits were provided to us prior to this hearing. It is
17 entirely inappropriate to launch into a multimedia presentation
18 when I have no idea what is about to go up on the screen,
19 number one.

20 Number two, I renew my objection that anything that
21 happened in the Dartmouth speech has already been litigated in
22 this court and the findings are what they are, and this is not
23 an opportunity to go over old ground. That's already been
24 done. It's not relevant to this hearing.

25 THE COURT: To facilitate the proceeding, I note your

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1 objection to matters of conduct that happened before the breach
2 this summer. I am overruling those objections for the reasons
3 that I have stated, but I will accept your general objection to
4 this line of questioning.

5 I don't know if we have other video that we are going
6 to play, if you can give counsel a heads-up. Obviously, this
7 is Mr. Kreindler's speech, and this issue I think is reasonably
8 within the bounds of the subject matter.

9 Mr. Hansen, I don't know how much longer until you
10 want to start talking about the breach this summer. It's now
11 11:30. I am hoping we can move to that in the next five to ten
12 minutes.

13 MR. HANSEN: Just a couple of questions about this,
14 and then I will move exactly to that.

15 THE COURT: Thank you.

16 MR. HANSEN: I think it's important, your Honor, and I
17 do want to just get Mr. Kreindler's testimony on this important
18 point.

19 BY MR. HANSEN:

20 Q. What we just played, Mr. Kreindler, was you purporting to
21 summarize the contents of a document that had been provided by
22 the FBI under confidentiality, correct?

23 A. Wrong. Absolutely wrong.

24 Q. That's what our FBI told the court, didn't they?

25 A. No. You are wrong.

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1 Q. Our government came to this court and said, in a filing,
2 that you were improperly and misleadingly describing the
3 contents of the confidential FBI document, isn't that true?

4 A. It is not true because what I was talking about is the
5 public 2012 review.

6 Q. Wait. I am asking you a question about what the FBI
7 represented to this court, not what you think it is.

8 MS. KIRSCH: And if that was the question, your Honor,
9 I have an objection. Mr. Hansen is an experienced trial
10 lawyer. I am sure he knows very well how to present the
11 document to the witness and ask the witness to take a look and
12 then identify it, whether he recognizes it, and then we can
13 talk about what the FBI did or didn't say.

14 MR. HANSEN: We will take the time.

15 I just asked the question, did Mr. Kreindler know one
16 way or the other whether the FBI, or the Department of Justice
17 on behalf of the FBI, came to this court and said that you,
18 James Kreindler, in your Dartmouth College speech, had
19 misleadingly and improperly purported to describe the contents
20 of a protected document? Do you know?

21 MS. KIRSCH: We can look at the document, your Honor.

22 THE COURT: Mr. Kreindler, do you recall that
23 submission?

24 THE WITNESS: No, I don't.

25 THE COURT: Let's move on.

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Kreindler - Cross

1 BY MR. HANSEN:

2 Q. We can all agree that whatever you did at Dartmouth you did
3 after you got the first warning from the court, correct?

4 A. Yes, absolutely.

5 Q. Let's get to the heart of the matter, as the court informed
6 us.

7 Three months ago you went on Michael Isikoff's podcast
8 to talk about the sealed al-Jarrah deposition, correct?

9 A. That was not the only topic, no.

10 Q. It was one of the topics, wasn't it?

11 A. It's a topic I said I wish I could talk about, but I can't.

12 Q. Let's see in a minute whether you talked about it.

13 Certainly you know Mr. Isikoff, don't you?

14 A. I know who he is, and I have spoken to him over the years.

15 Q. For how long have you known him?

16 A. A long time. I can't -- for 20 years, there is maybe a
17 dozen reporters who have followed the 9/11 Saudi involvement
18 story, and he is one of them. But I can't remember the first
19 time I ever spoke to him.

20 Q. How often do you speak to Mr. Isikoff?

21 A. It isn't on a regular basis. There tends to be a lot more
22 media interest as we approach the anniversaries, or something
23 happens, like Joe Biden's Executive Order. So I might talk to
24 him frequently at one point in time and then not again for
25 years.

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1 Q. In the sworn declaration you filed with the court in
2 September, you said you recalled two telephone conversations
3 within the relevant period, correct?

4 A. Yes, I do.

5 Q. In fact, now that we have the record, we see there are
6 actually three conversations, correct?

7 A. I just remember two.

8 Q. Submitting sworn testimony to the court is a pretty serious
9 matter, isn't it?

10 A. Of course.

11 Q. Did you check your cell phone, office phone, or other phone
12 records to see how many calls you had with Mr. Isikoff?

13 A. I have no such phone records. I remember two phone calls
14 with Mike Isikoff.

15 Q. Wait a second. You say there are no phone records you can
16 check to see your calls with Mr. Isikoff?

17 A. There might be, but I would not know how to check phone
18 records. I wasn't in the office at all because of COVID. On
19 my cell phone I can scroll through texts, but I don't know how
20 to look at my cell phone and find all calls.

21 Q. Whether you can do it or not, you have a very capable
22 staff. My question is, Mr. Kreindler, is, before submitting
23 sworn testimony to the court about a subject that's objectively
24 determinable, such as how many phone calls you had with the key
25 reporter in this matter, are you telling us you didn't even

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Kreindler - Cross

1 bother to check or have someone check for you what the record
2 showed about your calls?

3 A. What I am telling you is I distinctly remember two phone
4 calls with Mike Isikoff.

5 Q. I know you said that. Did you check the records or have
6 someone check the records?

7 A. There are two different questions.

8 Q. My question is, did you check the records or have someone
9 check the records? That's the question.

10 A. Someone may have checked the records. I did not check the
11 records.

12 Q. If someone had checked the records, you couldn't have put
13 in a truthful statement that there were only two, could you?

14 A. As far as I know, there were only two phone calls. You're
15 alluding to a third phone call that I'm not aware of or don't
16 remember.

17 Q. OK.

18 THE COURT: Mr. Kreindler, could I ask, when you
19 submitted in your declaration, I recall having two phone calls
20 with Mr. Isikoff, did you submit this declaration and did you
21 prepare this declaration based solely on your recollection or
22 did you look at any documents to refresh your recollection?

23 THE WITNESS: Solely on my recollection. That's why I
24 said I recall two phone calls with Mike Isikoff, I am pretty
25 sure on a Monday and a Wednesday.

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1 THE COURT: Thank you.

2 MR. HANSEN: In the interest of time, I will ask
3 counsel for Kreindler & Kreindler to stipulate there were
4 actually three calls, according to the records they produced.
5 But if we don't have the stipulation, I will show Mr. Kreindler
6 the records.

7 MS. KIRSCH: If you direct me to the document, I will
8 take a look.

9 MR. HANSEN: Sure. Exhibit 122.

10 MS. KIRSCH: This would have been much easier to do in
11 advance of the hearing, which is why we asked to see the
12 documents.

13 MR. HANSEN: There are three entries. It shouldn't
14 take that long to look.

15 Maybe it will go quicker if I put the exhibit up. Why
16 don't we put up Exhibit 142, please.

17 BY MR. HANSEN:

18 Q. Mr. Isikoff's phone number is 258-2535, area code 202,
19 correct?

20 A. I don't remember, but if you say so, sure.

21 Q. And you have a phone number 914 and starting with a 589
22 prefix?

23 MS. KIRSCH: I am sorry. Did we continue? I was
24 still looking at the phone records.

25 THE COURT: He was pulling them up for you. Would you

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1 like to wait? Have you seen these?

2 MS. KIRSCH: We were trying to look through.

3 I am going to renew my standing objection that to put
4 this binder in front of me while the hearing has just begun is
5 a very inappropriate way to proceed, and if it takes me time to
6 look at the documents, it takes me time to look at the
7 documents.

8 MR. HANSEN: With all respect, your Honor --

9 MS. KIRSCH: I request that counsel not proceed with
10 questioning when he sees that I am looking at a document.

11 MR. HANSEN: Your Honor, never --

12 THE COURT: It's impossible for the court reporter to
13 do her job when everybody is speaking.

14 So, Ms. Kirsch, take your moment, look at the exhibit.

15 Mr. Hansen, please sit tight, and as soon as Ms.
16 Kirsch tells you that she is ready, you can proceed.

17 MS. KIRSCH: Document 142 reflects three phone calls
18 incoming from Mr. Isikoff's phone number to Mr. Kreindler in
19 June, correct. If they want to talk about the time or the
20 date, you will still have to show Mr. Kreindler the document
21 himself so that he can see it.

22 THE COURT: Thank you.

23 MR. HANSEN: Could we have a stipulation there were
24 three calls?

25 THE COURT: Yes. She agrees there are three calls.

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Kreindler - Cross

1 BY MR. HANSEN:

2 Q. So, Mr. Kreindler, you also had text messages with
3 Mr. Isikoff, correct?

4 A. A couple, yes.

5 Q. Did you check those before submitting your sworn testimony?

6 A. Yes.

7 Q. So why didn't you tell us about those?

8 A. I thought you were asking me about phone calls.

9 Q. Well, I am sorry if I was unclear. Your declaration talks
10 about recalling two phone calls. In fact, we now know there
11 are three. Your declaration doesn't say anything about text
12 messages. Were there text messages in addition to phone calls
13 that you did not put in your sworn declaration?

14 A. My declaration was about my talking to Mike Isikoff. I
15 later found some, practically nothing text messages, which I
16 guess you have.

17 Q. That's just not my question, Mr. Kreindler. I will try one
18 more time.

19 A. Sure.

20 Q. When filing a sworn declaration with your court about your
21 contacts with Mr. Isikoff on September 27, were you aware that
22 in addition to phone calls, you also had text messages with
23 him?

24 A. Sorry. You know, I don't remember when we found the text
25 messages. We had a procedure where we had to turn over all of

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1 our phones, but I don't remember whether -- I think that was
2 after the declaration.

3 Q. Did you do a search of your text messages before September
4 27 so you could provide truthful testimony to the court?

5 A. First of all, my testimony is truthful. I stated what I
6 recall, and I recalled those two phone calls with Mike Isikoff.

7 Q. Not my question. Please listen carefully.

8 Before submitting your sworn declaration, which dealt
9 with the subject of communications with Mr. Isikoff, did you
10 conduct a search or have anyone working for you conduct a
11 search of your text messages, yes or no?

12 A. I don't think I did.

13 Q. So, in addition to telephone calls and text messages with
14 Mr. Isikoff, you also e-mailed Mr. Isikoff in July 2021,
15 correct?

16 A. I don't remember.

17 MS. KIRSCH: Your Honor, once again, would you like to
18 show Mr. Kreindler a document? This is not a memory test.

19 THE COURT: Is there a particular e-mail you would
20 like to ask Mr. Kreindler about or are you just asking whether
21 he recalls having e-mail communication during the relevant
22 period?

23 MR. HANSEN: The latter, your honor. I am just
24 establishing the fact that he knew.

25 THE COURT: Do you have a recollection of having sent

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Kreindler - Cross

1 e-mails to Mr. Isikoff during the relevant period?

2 THE WITNESS: I don't recall, and I am happy to look
3 at it, and if there is one, I can say something about it. As I
4 sit here now, I don't recall e-mails with Mike Isikoff. I
5 recalled the phone conversations.

6 BY MR. HANSEN:

7 Q. Mr. Kreindler, before submitting your sworn testimony about
8 your communications with Mr. Isikoff on September 27, did you,
9 yourself, or anybody working under your direction undertake a
10 search of your e-mails with Mr. Isikoff?

11 MS. KIRSCH: I am going to object to that question as
12 well. The declaration says what it says. He hasn't
13 established that there is anything untruthful, and
14 characterizing the declaration and implying what Mr. Kreindler
15 should or should not have done is an improper question. He can
16 give him the declaration. He can ask if it's true. Counsel is
17 testifying and making misleading questions.

18 THE COURT: One of the subject matters before the
19 court is whether or not anybody submitted false statements to
20 the court, and the inquiry that Mr. Kreindler is responding to
21 in the September 27 declaration asks to identify all
22 communications, whether oral or written. And Mr. Kreindler
23 prepared his declaration based, it sounds like, on his
24 recollection and reported two phone calls. I think Mr. Hansen
25 is entitled to ask questions about whether there were any other

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1 oral or written communications that he failed to include in
2 this declaration.

3 You can proceed.

4 BY MR. HANSEN:

5 Q. Do you recall, Mr. Kreindler, that there were a number of
6 e-mails between you and Mr. Isikoff in July?

7 A. Yes, there were some e-mails. When we found out about the
8 leak, my partner Duke undertook --

9 Q. We will get there, Mr. Kreindler. I am just asking you a
10 simple question.

11 Were you aware before September 27 that there as many
12 as nine different e-mails between you and Mr. Isikoff? That's
13 a yes or no question.

14 MS. KIRSCH: Your Honor, can we please put Mr.
15 Kreindler's declaration in front of him so he can read it?

16 MR. HANSEN: I am asking about the subjects. I am not
17 even asking about the declaration right now.

18 THE COURT: Let's move on to another area of
19 questioning. I think we have established what we need to
20 establish. To the extent you want to move to the e-mails,
21 let's move to the e-mails.

22 MR. HANSEN: Thank you.

23 BY MR. HANSEN:

24 Q. You would agree, Mr. Kreindler, that e-mails from the
25 Kreindler & Kreindler e-mail address are readily detectable and

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1 investigable by members of your staff, correct?

2 MS. KIRSCH: With all due respect, his declaration
3 does reference e-mails. There is an impression being created
4 that his declaration does not reference e-mails. He is
5 cleverly not presenting the declaration so we can all take a
6 look at it. These questions are inappropriate.

7 THE COURT: Mr. Kreindler, I will refresh your
8 recollection. You said in your declaration, "I exchanged
9 several e-mails with Isikoff, all of which are attached to the
10 accompanying declaration of John Hartney." That is what is in
11 the declaration.

12 Mr. Hansen, you can proceed.

13 BY MR. HANSEN:

14 Q. So my question is, e-mails can be readily searched and
15 found on your system, correct?

16 A. I think so, but I think you should ask John Hartney about
17 that. The computer system is not my specialty.

18 Q. Let's talk about the lead-up to the leak.

19 You were consulting with Mr. Fawcett at the very same
20 time you were working with Mr. Isikoff on his podcast episode
21 that aired on July 10, 2021, correct?

22 A. I work with John Fawcett every day. So, by definition,
23 sure.

24 Q. Let's just look at the call record you had with him.

25 You spoke to Mr. Isikoff at 1:42, page 3.

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1 THE COURT: Can you give Ms. Kirsch an opportunity to
2 review?

3 MR. HANSEN: Of course, your Honor.

4 Exhibit 142, page 3, a single entry.

5 MS. KIRSCH: OK.

6 Q. Mr. Kreindler, it looks like 6/28/21, that's July 28,
7 Mr. Isikoff's number.

8 THE COURT: 6/28 would be June.

9 MR. HANSEN: Sorry.

10 Q. Seven minutes.

11 Do you recall what you were speaking to Mr. Isikoff
12 about on June 28?

13 A. Yeah. That was a Monday, right?

14 Q. I don't remember.

15 A. As I said, I remember speaking to him on a Monday and a
16 Wednesday after the Jarrah deposition. And the Monday
17 conversation was much longer, so I assume this is the Monday
18 conversation. Yes. And I remember it well.

19 Q. What were you speaking with him about?

20 A. So he called me up. He, other reporters in the world knew
21 the schedule for the depositions of the Saudi government
22 officials who we were deposing. He called me up and said, You
23 guys deposed Jarrah at the end of last week, didn't you? I
24 said, Yeah, my partner, Megan Benett, took Jarrah's deposition.
25 Then he said, What can you tell me about it? And I said, Mike,

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1 I wish I could tell you everything about it, I would love to be
2 able to tell you everything about it, but I can't. The only
3 thing I can say is, we were very, very happy, we were delighted
4 with how the deposition went and what it revealed. And then he
5 was fishing for some more information, and I said, I'm sorry,
6 I'm sorry, I wish I could. Let me get back to the team and see
7 if there is any part of the deposition that was not marked
8 confidential that we could share.

9 Then the second call I think was on the Wednesday.

10 Q. We are on the first call.

11 A. I'm just telling you the story.

12 Q. So, after you spoke to Mr. Isikoff on the 28th, almost
13 right after, at 12:23 -- I am going to let your attorney look
14 at Exhibit 134, and the references I will be asking about are
15 at the bottom of page 1 and the top of page 2.

16 A. Yeah. That's 12:22 or 12:23. One minute, yes.

17 MR. HANSEN: Let me know when you're ready to proceed.

18 MS. KIRSCH: Go ahead.

19 Q. So we established the call with Isikoff was around 11:36 in
20 the morning. It lasted seven minutes. And here you are
21 speaking with Mr. Fawcett at 12:22 and 12:23. And in those
22 calls, you are directing Mr. Fawcett to get 9/11 case materials
23 to Mr. Isikoff, aren't you?

24 A. These are calls with John? No, I don't think so.

25 First of all, that's not what I asked John. I asked

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1 John, is there any part of the Jarrah deposition not marked
2 confidential that we could share? And he said, No, it's all
3 confidential. That's why the whole call is a minute.

4 Q. So you specifically directed Mr. Fawcett not to share any
5 information with the reporter?

6 A. The topic -- I told you exactly what that one-minute call
7 was. John, is there any part of the Jarrah deposition not
8 confidential under these orders that we could share with
9 Isikoff who is asking about the deposition? And John said no.

10 MR. HANSEN: Your Honor, the next thing I am going to
11 ask Mr. Kreindler about is a podcast excerpt, which we could
12 play the audio of, but I know you have instructed us to give
13 time for Kreindler counsel to listen to it. We have a
14 transcript. I don't know if this is a good time to have a
15 break.

16 THE COURT: I was just going to raise that. Let's
17 take a quick five-minute break. You can give Ms. Kirsch an
18 opportunity.

19 Thank you. We are briefly adjourned.

20 (Continued on next page)

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Kreindler - Cross

1 THE COURT: Just for some housekeeping matters, we're
2 going to break at 1:00 for lunch. I'd like the lawyers to
3 start coming back in at 1:45 so that we can really begin at
4 2:00. So for the court reporter, back at 2:00, but I want at
5 2 o'clock start questioning the witness again. So we've got an
6 hour now.

7 Go ahead, Mr. Hansen.

8 MR. HANSEN: Thank you, your Honor.

9 BY MR. HANSEN:

10 Q. Mr. Kreindler, I'm going to play part of your podcast with
11 Mr. Isikoff, Exhibit 39, and ask you some questions about it.

12 (Audio played)

13 I'll play another excerpt where you purport to
14 summarize the contents of these depositions.

15 (Audio played)

16 Mr. Kreindler, that's you talking to the press,
17 telling the press, about the contents of sealed depositions,
18 isn't it?

19 A. No.

20 Q. So you're telling this Court under oath that when you say
21 witnesses and sworn testimony inculpated every Saudi official,
22 that's not revealing or purporting to reveal the contents of
23 those depositions?

24 A. No, it is not.

25 Q. After the taping on -- the taping was on July 1, is that

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Kreindler - Cross

1 correct?

2 A. I think so.

3 Q. The next day you had a call with Mr. Fawcett. Do you
4 recall that?

5 A. Not specifically, no.

6 Q. Let's look at Exhibit 134, page 1. If you look at the
7 yellow highlighting, it's an 18-minute call between you and
8 Mr. Fawcett.

9 A. OK.

10 Q. In that call, following up on your podcast taping with
11 Mr. Isikoff, you told Mr. Fawcett to disclose transcript
12 material to Mr. Isikoff, didn't you?

13 A. No, absolutely not.

14 Q. What did you tell him about?

15 A. I don't know, but I didn't and never would ever, ever, ever
16 do that.

17 Q. Mr. Fawcett reached out to Mr. Isikoff the very next day in
18 a call that we've highlighted. You see those? Actually,
19 there's four calls. That's Mr. Isikoff's number.

20 Why is it that Mr. Fawcett is reaching out to
21 Mr. Isikoff the very day after you spoke to him following the
22 podcast?

23 A. I don't know. I don't remember.

24 Q. In fact, that's about the time Mr. Fawcett leaked the
25 sealed transcript, the Al Jarrah deposition, to Mr. Isikoff,

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Kreindler - Cross

1 isn't it?

2 A. How would I know that?

3 Q. The Isikoff podcast was broadcast on July 10, correct?

4 A. I think so.

5 Q. We just listened to it, and we listened to your comments
6 attacking the FBI protective order. And I want to direct you
7 to two days later to an email on your system that was sent by
8 Mr. Fawcett to Mr. Isikoff.

9 If you could pull up 56F at page 13. This was an
10 email that was disclosed only after multiple court orders.

11 MS. KIRSCH: Your Honor, I'd like a minute to look at
12 the document.

13 THE COURT: Sure. This was submitted, I believe, by
14 Mr. Hartney, is that correct?

15 MR. HANSEN: It was attached to the Hartney
16 declaration in September 27, I believe, your Honor.

17 MS. KIRSCH: OK. That's fine.

18 THE COURT: You can proceed.

19 BY MR. HANSEN:

20 Q. OK. So just to get you oriented, Mr. Kreindler, we're
21 looking at an e-mail from John Fawcett of Kreindler & Kreindler
22 to Michael Isikoff dated July 12. There's an attachment of an
23 unclassified privilege log, and there's no discussion. It's an
24 empty message. But if we go on and look at the documents, I
25 believe we can show you that this is the FBI's privilege log

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Kreindler - Cross

1 indicating which documents the FBI was not turning over because
2 of its concerns about the public interest.

3 So my question to you, sir, is were you aware that
4 Mr. Fawcett was providing this document to Mr. Isikoff on or
5 about July 12?

6 A. I was aware that John gave him the list of -- the public
7 list of documents the FBI was withholding. I don't recall the
8 date.

9 Q. Did you know he'd done it by email?

10 A. I don't know how else he would do it.

11 Q. Did you know, even if you don't recall exactly, was it
12 approximately around the time of the broadcasting of your
13 podcast with Mr. Isikoff?

14 A. More or less, perhaps. I just don't -- I don't recall when
15 he did it. I do recall at some point we gave Mike -- John gave
16 Mike Isikoff the public list of the documents that the DOJ was
17 withholding, and -- I'll stop there. I can say more if you'd
18 like.

19 Q. And he did that at your instruction, correct?

20 A. Probably. I don't recall a specific moment on what day I
21 said, John, can you send the privilege log to Mike Isikoff.

22 Q. So the next day, on July 13, Mr. Isikoff emails you. And
23 we'll put up Exhibit 56F, page 24. It's an email from Michael
24 Isikoff to Jim Kreindler checking in.

25 A. Right.

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Kreindler - Cross

1 Q. And Mr. Isikoff writes -- and this, by the way, is the day
2 after Mr. Fawcett sends the FBI privilege log -- "Hi, Jim,
3 where do you stand on your request to DOJ to lift the state
4 secrets privilege and gag order?"

5 Do you recall getting that email?

6 A. Yes, I do.

7 Q. This also related to what Mr. Fawcett had sent to
8 Mr. Isikoff, correct? This is further discussion about these
9 documents the FBI is holding back, right?

10 A. Yes.

11 Q. OK. Are you speaking with Mr. Isikoff around July 13?

12 A. I don't recall. I just remember those two conversations
13 that I told you about.

14 Q. Surely at some point Mr. Isikoff calls you and says, in
15 substance: Hey, Jim, I've got the Al Jarrah transcript. You
16 care to comment on it?

17 A. That never, ever, ever happened.

18 Q. Why would he not? If he'd gotten the transcript from some
19 other source, it would be a perfectly natural thing for a
20 reporter to call a willing source like you to see if you had a
21 comment on it, wouldn't it?

22 A. No.

23 MS. KIRSCH: That calls for speculation as to what
24 Mr. Isikoff was or wasn't thinking. It's an improper question,
25 and it's also argumentative.

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Kreindler - Cross

1 THE COURT: The question is -- the objection is
2 sustained with respect to what Mr. Isikoff was thinking, but I
3 don't think it's argumentative. So it's overruled on that
4 ground.

5 Q. I'm not asking you what Mr. Isikoff was thinking, but
6 didn't reporters, including Mr. Isikoff, call you pretty
7 routinely for comments on materials that they had obtained from
8 other sources?

9 A. It may have happened. As I think about it, I can't
10 remember a specific -- I don't remember that ever happening,
11 but it could have.

12 Q. Reporters always try to get quotes from sources, don't
13 they?

14 A. I can't speak to what all reporters always do.

15 Q. Do you think the reason why Mr. Isikoff did not reach out
16 to you for comment on the transcript was because he knew that
17 your firm had provided it to him in violation of the court
18 order, and he didn't want to compromise you?

19 MS. KIRSCH: Calls for speculation.

20 THE COURT: Sustained.

21 Q. Did you ever wonder why Mr. Isikoff had never asked you
22 about this transcript?

23 A. No. We only found out about it on September 27.

24 Q. Well, you knew about the leak long before September 27,
25 correct?

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Kreindler - Cross

1 A. I knew about the leak when I read Mike Isikoff's article
2 the day it was published in Yahoo! News.

3 Q. That's just where we're going next.

4 So you did see the story on the day it was published,
5 correct?

6 A. Yes.

7 Q. And you knew that the transcript that the reporter had was
8 a confidential transcript, correct?

9 A. All I knew was what the story said, and my recollection is
10 Mike Isikoff's story said I've -- I've obtained pages of the
11 Jarrah deposition.

12 Q. Well, that's not my question.

13 Did you know it was a confidential transcript that
14 Mr. Isikoff had obtained?

15 A. I knew the transcript was confidential. I didn't know what
16 really happened. All I knew was what Mike Isikoff said in his
17 piece.

18 Q. And you knew on July 15 that your firm was a likely source
19 of the leak, didn't you?

20 A. No, absolutely not. I had an idea who the likely source
21 was, but I absolutely believed it was no one from our firm.

22 Q. So let's look at Exhibit 56A at paragraph 5, which is your
23 declaration, and we'll go to paragraph 5. You wrote in your
24 declaration filed September 27 that you asked Mr. Maloney, your
25 partner, to conduct an internal investigation, and that was

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Kreindler - Cross

1 right after getting off the telephone call on or about July 15,
2 correct?

3 A. I'm sorry. You lost me. Which telephone call on July 15?

4 Q. Let's go up a paragraph. Let's go up to four.

5 You say on the 15th you had a conference call with
6 other members of the PEC?

7 A. Yes.

8 Q. And was that on July 15?

9 A. I think so.

10 Q. So now let's go to five.

11 A. Yeah.

12 Q. After the call, so is this on the 15th as well?

13 A. Yes.

14 Q. You say you asked Mr. Maloney "to conduct an internal
15 investigation to determine whether anyone at Kreindler was
16 responsible for providing the information to Isikoff," correct?

17 A. Yeah, that's exactly what it says.

18 Q. And all of the people on your team who had access,
19 according to you, to the Al Jarrah transcript were suspects in
20 that investigation, weren't they?

21 A. No, none were suspects.

22 Q. Well, then who were you investigating?

23 A. We had to do an internal investigation. We talked about it
24 first, obviously.

25 Q. Wait, wait, wait. It's a "who" question. Who were you

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Kreindler - Cross

1 investigating when you tell Mr. Maloney to conduct an internal
2 investigation?

3 A. I -- OK.

4 MS. KIRSCH: Mischaracterizes the witness' testimony,
5 but he can testify now.

6 A. Sure. I was asking Duke to work with John Hartney on our
7 computer system to search all communications with Isikoff, the
8 Jarrah deposition to see if -- if there's anything on our
9 system that would indicate anyone at the firm sent it, because
10 it was my absolute belief that no one did or would, but we had
11 to prove it by going through the whole computer system.

12 Q. Can I ask my question one more time?

13 A. Sure.

14 Q. Who were you investigating? Anybody?

15 MS. KIRSCH: Objection.

16 A. No one.

17 Q. So Mr. --

18 THE COURT: Objection's sustained.

19 A. It was blanket.

20 THE COURT: Sorry. I think we're getting a little
21 caught up on the terms "investigation" and "investigating." I
22 don't think, Mr. Hansen -- the Court is not interrupting it as
23 a loaded word. There's an investigation.

24 I think the question, Mr. Kreindler, that Hansen is
25 asking is did you give any direction or have any conversation

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Kreindler - Cross

1 with Mr. Maloney about who he should speak with or whose files
2 he should look to as part of this internal investigation that
3 he was leading?

4 THE WITNESS: Yes, I did.

5 THE COURT: OK. I think Mr. Hansen would like to know
6 who you suggested should be part of that search and review.

7 THE WITNESS: I -- I or Duke said: Why don't you,
8 Duke, work with John Hartney to run through the whole computer
9 system to make sure that there was nothing about the Jarrah
10 deposition transcript to Isikoff.

11 BY MR. HANSEN:

12 Q. And that's it? Nothing more?

13 A. That was it.

14 Q. Well, we know from Mr. Hartney now that there's no way
15 looking at your computer system would tell you anything about
16 who had downloaded the transcript, who had printed it out, and
17 who had given it to Mr. Isikoff, correct?

18 MS. KIRSCH: That's actually not an accurate statement
19 of Mr. Hartney's declaration.

20 MR. HANSEN: Let me rephrase, then.

21 Q. Do you understand that anyone with Kreindler & Kreindler
22 employee login access can get access to the sealed materials on
23 the Kreindler system or could before September 27?

24 A. No, I think not everyone could do that, only people who had
25 signed the protective order.

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Kreindler - Cross

1 Q. Is that because there was a policy of that, or was there
2 anything in the computer that prevented them from getting it?

3 A. I can't answer how the computer works. I can tell you that
4 from the time we had to deal with the first order through the
5 second DOJ order, we made sure that no one in the firm who
6 hadn't, as I did, gave my word to follow these orders could
7 look at -- could see the material.

8 Q. How did you do that technologically?

9 A. I have no idea. That's -- you're asking the wrong person
10 on computer systems and technology.

11 Q. In fact, there was nothing technologically that prevented
12 anyone with Kreindler & Kreindler employee access from getting
13 that transcript, printing it off, and leaving it on a bus for
14 Mr. Isikoff?

15 MS. KIRSCH: Objection. Mr. Kreindler just said he's
16 not the guy who knows how the system works. That was actually
17 in this statement of what's in the record, and that's
18 inappropriate.

19 THE COURT: The objection is sustained.

20 Mr. Kreindler, if you want to look at confidential
21 material on your system --

22 THE WITNESS: Yes.

23 THE COURT: -- can you describe for me generally what
24 you have to do to access that information.

25 THE WITNESS: I only did one thing. If I wanted to

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Kreindler - Cross

1 see material, I would ask John, can you send me one of the
2 documents we're talking about? So I'm trying not to use
3 anybody's names, but if I wanted to see --

4 THE COURT: Document X.

5 THE WITNESS: -- document X on Jarrah, I would just
6 call John --

7 THE COURT: John Fawcett.

8 THE WITNESS: -- John Fawcett, yeah, and say, Can you
9 show me this document.

10 THE COURT: So you personally, in preparing for a
11 deposition or a motion or whatever, would never enter the
12 server yourself and look for documents? You would rely only on
13 Fawcett to provide it?

14 THE WITNESS: I never entered the search for myself.

15 THE COURT: OK.

16 THE WITNESS: I confess to that complete limitation.
17 I don't know how the server works. A dozen of my partners are
18 here to confirm how frustrating it is because I need to ask
19 someone like John, can you send me a particular document.

20 THE COURT: So I think the witness has established
21 that he is not competent to answer questions about how the
22 server works or how access is provided, so let's move on from
23 that topic of conversation.

24 MR. HANSEN: Your Honor, of course, but I will return
25 to it when I get to Mr. Kreindler's declaration later when he

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Kreindler - Cross

1 talks about who had access to the transcript because I believe
2 that's a fair question, but I'm not going to do it now.

3 BY MR. HANSEN:

4 Q. All right. So let's talk about this investigation. You
5 could have assigned other lawyers in your firm who had no
6 involvement in the 9/11 case or access, in your words, to the
7 9/11 transcripts to do the investigation, correct?

8 A. Anything is possible, but that would make no sense.

9 Q. Well, you would agree with me, would you not, that in any
10 investigation to actually try to get to the facts, it would be
11 important to move quickly, correct?

12 A. Of course. No one wants to move slowly.

13 Q. Well, one thing you'd want to do is keep evidence from
14 being destroyed, wouldn't you?

15 A. No one wants to destroy evidence, or I certainly don't want
16 to destroy any evidence anytime.

17 Q. Well, that's not my question, Mr. Kreindler.

18 You've told us in your sworn testimony that you
19 directed your colleague to do an internal investigation. I
20 think you've agreed that it should be done quickly, and I'm
21 asking you were you aware, when you gave this instruction, of
22 the need to move quickly in order to prevent the destruction of
23 evidence?

24 A. It never dawned on me that anybody would destroy evidence,
25 so I did not have that in my mind. And I also have to say it

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Kreindler - Cross

1 wasn't my directive or order to Duke to do it. We talked about
2 it, and Duke said, I'll work with John Hartney and run through
3 our whole system to make sure that no one here had anything to
4 do with it.

5 Q. In fact, if Mr. Fawcett is to be believed, evidence was
6 destroyed here, wasn't it?

7 A. That's what John said later.

8 Q. So as part of this internal investigation, again, only if
9 you know, were all of the Kreindler & Kreindler professionals
10 who you believed had access to the Al Jarrah transcript
11 immediately questioned?

12 A. I think we were all there.

13 Q. What do you mean you "were all there"?

14 A. OK. I am struggling with your question because it doesn't
15 reflect the actual discussions we had as soon as we got
16 together and talked about it.

17 Q. So who got together and talked about it?

18 A. Here's what I remember. I read the article when I was at
19 home. I came to the office, I think, later that day. I
20 believe Steve Pounian was taking a deposition that day. When I
21 got to the office, I spoke to John, John Fawcett, Duke, Andrew
22 Maloney, and said, we also -- oh, my God, I mean, where, you
23 know, did this come from? Where did Isikoff get it? And we
24 had -- we were talking about it kind of mystified, and I said
25 there's only one source that I could think of who would have

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Kreindler - Cross

1 given it to Mike Isikoff now. I can tell you what I said, if
2 you want to know or ask me later.

3 Q. So other than that meeting that you've described, did you
4 give Mr. Maloney any directive to actually interview witnesses,
5 including all the members of the team who had access to the
6 transcript?

7 A. It was at that meeting, that discussion, that Duke said I
8 will work with John Hartney. I think Megan was in her office,
9 and I recall speaking to her later. If I'm remembering
10 correctly, Steve was doing a deposition or preparing for a
11 deposition, so whatever I said to Steve later in the day was
12 very brief. And then there was some internal discussion. We
13 set up a PEC call to see -- talk about this and see if anybody
14 had any idea how Isikoff got it.

15 Q. So if I'm hearing your answer correctly, and correct me if
16 I'm wrong, you did not give Mr. Maloney any instruction to
17 actually interview witnesses, did you?

18 A. Interview? I don't know who the witnesses you're talking
19 about are.

20 Q. How about all the people who had the transcript who might
21 have leaked it?

22 A. We all were -- all the lawyers working on the case, the
23 four of us and John, were part of this discussion. Duke
24 volunteered to head up the -- you're calling it an
25 investigation -- to go through the system and make sure that no

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Kreindler - Cross

1 one at the firm had anything to do with it.

2 Q. OK. I think you've answered my question. Let me just ask
3 another question.

4 You worked very closely with John Fawcett. Did you
5 personally ask John Fawcett: John, did you leak this
6 transcript?

7 A. I -- I did not do it as a Q & A. I spoke to John. I
8 didn't do it. I know you didn't do it. I have no idea who
9 could have done it. The only party I could think of that would
10 have leaked this to Isikoff now was somebody on the Saudi side.

11 Q. Now, Mr. Kreindler, let me just ask you to focus on my
12 question, please.

13 At any point, at any time, did you ever ask John
14 Fawcett whether he had provided the confidential transcript to
15 Mr. Isikoff?

16 MS. KIRSCH: That was asked and answered, your Honor.

17 THE COURT: I don't think it was answered, so you can
18 answer the question.

19 A. I talked to John --

20 Q. No, no, no, I don't want "talked to." It's a simple
21 question. I'd like a direct answer.

22 At any point in time, did you ever ask John Fawcett,
23 in words or substance, John, did you provide the Al Jarrah
24 transcript to Mr. Isikoff?

25 A. No.

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Kreindler - Cross

1 Q. Did you direct anyone else to ask Mr. Fawcett that
2 question?

3 A. No. We just -- we talked about it.

4 Q. The question is not what you talked about, with all
5 respect.

6 So since you started an investigation on July 15, when
7 was it that all of the firm's outgoing emails to Mr. Isikoff
8 were pulled and reviewed?

9 MS. KIRSCH: Objection. I think we've already talked
10 about the fact that Mr. Kreindler was not running that part of
11 the investigation and the technology piece was not something
12 that he was intimately involved with.

13 THE COURT: Did you ever learn when the emails were
14 pulled in order to search for communications with Isikoff?

15 THE WITNESS: More or less. I don't remember the
16 date, but relatively quickly Duke, you know, spoke to John
17 Hartney and said, we've got to go through the whole system to
18 see if anyone emailed or had some way of sending the deposition
19 transcripts. My recollection is Duke did that with John
20 Hartney pretty soon. I just can't tell you the day or time
21 when he said to me, Jim, it's done, and there was nothing
22 there.

23 THE COURT: OK.

24 BY MR. HANSEN:

25 Q. So, Mr. Kreindler, based on your testimony, were you made

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Kreindler - Cross

1 aware within a few days after July 15 that this email search
2 had pulled up the fact that Mr. Fawcett was in email
3 communication with Mr. Isikoff during the month of July?

4 A. I knew John had some email --

5 Q. No, no, this is about the email.

6 Were you made aware that they'd done a search; the
7 search had found an email from July 12 from Mr. Fawcett to
8 Mr. Isikoff sending case materials? Were you aware of that?

9 A. I was aware of the privilege log, if that's what you're
10 referring to.

11 Q. Were you aware of the email sending the privilege log?

12 A. I must have been. I don't know how else he'd send the
13 privilege log to Mike Isikoff.

14 Q. So when did you first become aware of the email sending the
15 privilege log from Fawcett to Isikoff?

16 A. I don't know.

17 Q. Was it before the leak was disclosed -- I'm sorry. I'm
18 sorry.

19 Was it within a few days of July 15?

20 A. I just don't remember when I saw the email from John to
21 Isikoff saying, here's the privilege log.

22 Q. Again, I'm just asking whether you know. You may or may
23 not. When were the phones, the computer, cell phones, and
24 other devices of the Kreindler & Kreindler 9/11 case team
25 secured so they could be evaluated for evidence?

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Kreindler - Cross

1 A. Recently, with our lawyer Emily Kirsch, we had a whole
2 technological issue, and I was without my cell phone, my one
3 means of communication, for about four or five hours, which I
4 didn't particularly like, but managed.

5 Q. I'm sorry. Just so I'm clear, that was in October
6 sometime, wasn't it?

7 A. That's the only time I gave my cell phone to tech people to
8 do whatever alchemy they did to pull information or the system
9 out of it.

10 Q. As far as you're aware, no one else was asked to provide
11 devices, records, or other evidence prior to us asking for it
12 and the Court ordering it in October of this year?

13 A. I'm not aware of anyone else turning over their cell phones
14 or computers until we went through this technological search
15 fairly recently.

16 Q. Just before we leave this topic of your investigation,
17 according to your conversation with Mr. Maloney, your
18 expectation was the investigation was going to be Mr. Hartney
19 looking for evidence in your computer system that someone had
20 from your computer system provided the Al Jarrah transcript to
21 Mr. Isikoff, correct?

22 MS. KIRSCH: Again, Mr. Kreindler was not involved in
23 the details of this so-called investigation. That was
24 something that was tasked to Mr. Maloney. He's not the right
25 witness for this topic. This is a waste of time.

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Kreindler - Cross

1 THE COURT: I think he's testified, though, as to the
2 conversation he had with Mr. Maloney about what was expected,
3 so I think he can answer those questions. I recognize he has
4 demonstrated he doesn't know the details of that investigation.

5 Q. So can you answer my question?

6 A. I've lost it by now.

7 Q. Let's read it back to you.

8 (Record read)

9 A. I think it was broader than that, that Duke would say I'll
10 check on all communications between anyone here and Mike
11 Isikoff in that time period. But, you know, you'll be asking
12 him later today, I assume.

13 Q. So what did you understand "all communications" to mean?
14 Phone calls? Email? Texts? What?

15 A. Whatever the system would show. Certainly, I had in mind
16 emails. If someone sent a text from a personal phone, I don't
17 know that that would be reflected anywhere in our computer
18 system.

19 Q. So let's go to --

20 A. I just don't know.

21 Q. OK. Let's go to July 21. It's a few days after the
22 publication of Mr. Isikoff's story describing the confidential
23 transcript that was leaked to him. Were you aware on July 21
24 that lawyers for the Kingdom requested that the PEC agree to go
25 to the court for a court-ordered investigation into the leak?

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Kreindler - Cross

1 A. I don't remember the day, but, certainly, I remember us
2 saying to the Court at around that time we, too, want to do
3 whatever we can to see who gave this prohibited information to
4 Mike Isikoff.

5 Q. Well, let me give you little more specifics here. Let's
6 pull up Exhibit 42 at page 3.

7 A. OK.

8 Q. This is an email that was sent to you, correct?

9 A. Yeah. Well, looks like an email sent to Steve, me, and
10 Duke.

11 Q. And in the email, counsel for Saudi Arabia asks whether you
12 would consent to a motion requesting that the court direct all
13 entities or individuals to submit declarations, and so on. Do
14 you recall getting that?

15 A. Just generally. I don't specifically recall this email,
16 but --

17 Q. And that's --

18 A. -- I do recall it generally.

19 Q. That put you on notice that there was going to be a serious
20 problem, didn't it?

21 A. No.

22 Q. Well --

23 A. It did not.

24 Q. -- let's look at the phone records, then. If we go to
25 Exhibit 135, the very next morning, after the Kingdom is asking

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Kreindler - Cross

1 for a court-ordered investigation, you and Mr. Fawcett have a
2 phone call at 9:17.

3 Do you recall having that phone call with Mr. Fawcett
4 the morning after you got this communication from counsel for
5 Saudi Arabia saying that they're going to go to the court on
6 this?

7 A. No. I remember -- I don't remember what this phone call
8 was about.

9 Q. It's a pretty long call, isn't it, 46 minutes?

10 A. Yeah, it's 46 minutes.

11 Q. You talked about the leak, didn't you?

12 A. No.

13 Q. You talked about the fact that the Court might order an
14 investigation, didn't you?

15 A. Maybe, but I don't remember what this phone call was about.
16 It might have been the executive order.

17 Q. You talked about the need for Mr. Fawcett to get a criminal
18 defense counsel, didn't you?

19 A. No, absolutely not. That would never have crossed my mind.

20 Q. Who's Liz Crotty?

21 A. Liz Crotty worked in our office as an associate.

22 Q. And then she left your firm to go become a white-collar
23 defense lawyer, correct?

24 A. I think so.

25 Q. So explain for us why it was that immediately after your

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Kreindler - Cross

1 call with Mr. Fawcett, he calls Liz Crotty and talks to her for
2 22 minutes?

3 A. I have no idea why John called Liz Crotty. I don't think
4 I've spoken to her for years.

5 Q. Did you give Mr. Fawcett her information?

6 A. No.

7 Q. Do you know if they're friends?

8 A. I know he knew her, as we all did, because she worked in
9 the office.

10 Q. But the only reason he'd be calling Liz Crotty after your
11 46-minute phone call would be his concern that there was going
12 to be a big problem based on what you all had done with this
13 sealed transcript, right?

14 MS. KIRSCH: Objection.

15 A. Wrong.

16 MS. KIRSCH: Objection. All of this calls for
17 speculation. There's no foundation why Mr. Fawcett made any
18 call that he did.

19 THE COURT: Sustained.

20 Q. Do you have any explanation for this call sequence,
21 Mr. Kreindler?

22 A. I don't see it as a sequence. I have no idea why John
23 called Liz Crotty then, absolutely none.

24 Q. How about why did John call you back immediately after
25 hanging up with Ms. Crotty?

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Kreindler - Cross

1 MS. KIRSCH: Objection. More speculation.

2 THE COURT: Overruled.

3 You can answer.

4 A. I have no idea. I don't remember what we were talking
5 about then. Given the time period, I think it was more likely
6 moving toward Joe Biden's executive order than anything we're
7 discussing today.

8 Q. Do you remember anything about your five-minute call with
9 Mr. Fawcett that followed his 22-minute call with Ms. Crotty?

10 A. I don't remember anything about this call, but as I've told
11 you before, probably not a day goes by that I'm not talking to
12 John Fawcett about our case and how we can move it forward.

13 Q. Well, on the 23rd of July, the Kingdom of Saudi Arabia did
14 indeed go to court and request a thorough court investigation,
15 correct?

16 A. I can't remember the date, but I remember that that's what
17 Saudi Arabia did, and there was a brouhaha. We suggested a
18 meet-and-confer, and that never happened. They moved. There
19 was the limited meet and confer. The order resulted.

20 Q. Kreindler & Kreindler, alone among all firms in this case,
21 resisted a court-ordered investigation, isn't that the truth?

22 MS. KIRSCH: Objection.

23 A. No.

24 MS. KIRSCH: It's both false and it mischaracterizes
25 the facts.

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Kreindler - Cross

1 THE COURT: Overruled.

2 You can answer the question.

3 A. No.

4 Q. All right. Let's look at what your colleague Mr. Pounian
5 wrote on July 23 at Exhibit 43A, pages 4 to 5.

6 MR. ROBERTS: Counsel, that has an MDL protective
7 order. Should I just leave it?

8 THE COURT: Is there an application?

9 MR. HANSEN: Your Honor, I think he's being careful to
10 make sure that they have a chance to object before we put up
11 the document.

12 MS. KIRSCH: Thank you. I would like to take a moment
13 to read the document.

14 Kreindler & Kreindler does not have an objection. I
15 don't know whether the other PECs do.

16 THE COURT: I don't know that they are here or have an
17 argument to be made. I see --

18 MR. CARTER: Your Honor, this is Sean Carter, for the
19 PECs. We're here, but we do not have a copy of the exhibit
20 binder, so I don't know what it contains.

21 MR. MIGLIORI: Don Migliori from Motley Rice also on
22 behalf of the PECs. I do not have a copy either.

23 MR. HANSEN: Well, I don't want to slow things up, so
24 why don't I just ask Mr. Kreindler to look at it for himself.
25 I won't show it on the screen.

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Kreindler - Cross

1 Q. If you'd look at Exhibit 43A, pages 4 and 5, in that
2 exhibit binder.

3 A. 43A?

4 Q. The A behind the tab 43.

5 A. I see a 43, but not a 43A. Oh, I see it. OK. Yes.

6 Q. So my question, sir, is isn't it true that your colleague,
7 on behalf of your firm, said you weren't consenting to a
8 court-ordered investigation?

9 A. No, I don't think that's what -- no, it's not true.

10 Q. In fact, Mr. Pounian communicated that the Kreindler firm
11 had completed an internal review of the handling of the Jarrah
12 transcript and the conduct of Michael Isikoff and had
13 determined that it hadn't been the leaker, right?

14 A. I'm looking for Steve's email. Sorry.

15 Q. Take your time. Read as much as you'd like.

16 A. Are you talking about Steve's email Friday, the 23rd, at
17 3 o'clock to Greg Rapawy?

18 Q. If you look at page 4 of 5 of that -- I wish I could show
19 it on the screen for you, but I'm not going to -- pages 4 to 5,
20 there will be emails from your colleague to opposing counsel.

21 A. OK. At the top of page 4, yeah.

22 Q. Isn't it true that your colleague represented to opposing
23 counsel that Kreindler & Kreindler had completed its own
24 internal review, and it had determined that the transcript
25 wasn't released by Kreindler & Kreindler?

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Kreindler - Cross

1 A. I may be looking at the wrong place, but I believe that's
2 true.

3 Oh, yeah, I see it. Each firm has determined that the
4 transcript was not released through our firms or others working
5 with our firms and are prepared to document the facts if
6 necessary. So that's exactly what Steve said.

7 Q. Did you approve this email before it went out?

8 A. No, Steve handled it. He's my partner.

9 Q. Were you copied on it?

10 A. Let me see. It looks that way, yeah.

11 Q. So we're talking about six business days after the July 15
12 leak, correct?

13 A. That's when this email went out, yes.

14 Q. So what had Kreindler & Kreindler done between the 15th and
15 this date, the 23rd, so that it could make this representation
16 that it had determined it wasn't the leak?

17 MS. KIRSCH: I'll just renew my objection that the
18 details of the investigation were not Mr. Kreindler's
19 responsibility.

20 THE COURT: Understood. You can answer, to the extent
21 you have information to answer.

22 A. I don't. Duke and Steve were working on it.

23 Q. OK. Let's just cut ahead to July 27. After Saudi Arabia
24 applied to the court, your firm and the other firms went back
25 to the court and submitted a letter in which you again stated

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Kreindler - Cross

1 that each of the lead PEC firms was confident it was not the
2 source of the leak. Did you approve that letter before it went
3 out?

4 A. I don't know which letter you're --

5 Q. I'm sorry, Exhibit 43.

6 I don't know if there's an objection to -- if anybody
7 wants to object to us putting it up.

8 MS. KIRSCH: The Kreindler firm has no objection, but
9 again, I don't know if the other PECs do.

10 MR. MIGLIORI: Your Honor, Donald Migliori.
11 Obviously, without the document, we don't know what's being
12 shared. I think the way it was handled just recently protects
13 any potential disclosure of work product or communications
14 within the plaintiffs. So as long as the questions are limited
15 to the conduct of the Kreindler law firm and not disclosing
16 communications, we would object to any public disclosure of the
17 document or questions that go outside the scope of that narrow
18 language.

19 THE COURT: I believe this is a July 27 letter filed
20 to the court that I believe is currently under seal, but it may
21 not be under seal at some point in the future, but it's
22 currently under seal and subject to the MDL protective order.

23 MR. HANSEN: Well, your Honor, I don't want to take
24 more time than we need. It certainly would be better if we
25 could show Mr. Kreindler what we're talking about, but I'll try

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Kreindler - Cross

1 and do it another way.

2 BY MR. HANSEN:

3 Q. So, Mr. Kreindler, take a look --

4 THE COURT: You want to take a minute and show counsel
5 briefly?

6 MR. HANSEN: I'll just show Mr. Kreindler. I don't
7 think he objects to me showing Mr. Kreindler without showing it
8 on the screen. I don't really want to take the time.

9 THE COURT: OK.

10 Q. Mr. Kreindler, take a look at Exhibit 43.

11 A. OK.

12 Q. It's a letter. Did you review that letter before it was
13 filed with the court?

14 A. No. Steve did.

15 Q. As the cochairman of the PEC, do you not at least review
16 letters filed with the court by the PEC?

17 A. Sometimes, but I also rely upon my partners.

18 Q. So, once again, this time in an official document sent to
19 the court, Kreindler & Kreindler is signing on to a letter in
20 which it is saying it's finished its internal investigation,
21 and it's confident that Kreindler & Kreindler didn't do it,
22 isn't that correct?

23 A. If we're looking at the same thing, this July 27 letter
24 signed by Steve, Bob Haefele, and Sean Carter says we've done
25 investigations, and we're confident that these firms did not

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Kreindler - Cross

1 have anything to do with the leak.

2 Q. Just in the interest of completeness, I'll ask you again,
3 if you know, what investigation actually had been done by
4 Kreindler & Kreindler prior to July 27 in order to make this
5 representation to the court?

6 MS. KIRSCH: Objection.

7 THE COURT: You can answer the question.

8 A. I can't tell you anything in addition to what I've said
9 already, that Duke headed up this effort to make sure that, as
10 far as we knew, no one at the firm gave Jarrah portions to Mike
11 Isikoff.

12 Q. As the leader of your firm's team, as the cochairman of the
13 Executive Committee, wouldn't you want to satisfy yourself
14 about the accuracy and basis for any factual representation
15 being made to this Court?

16 A. In this case, with the millions of letters, there are many
17 times when I've relied upon my co-lead counsel at Motley or
18 Cozen or my partners Steve, Megan, or Duke. We do not -- it
19 would be impossible for every lawyer to review every document.
20 We'd never get anything out the door.

21 Q. So let's go to July 29.

22 THE COURT: May I ask a question on this exhibit, if
23 you don't mind?

24 MR. HANSEN: Of course.

25 THE COURT: Mr. Kreindler, I'm just curious on the

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Kreindler - Cross

1 signature line of this letter submission, it lists Mr. Pounian,
2 who appears to be the signer of the letter, and Mr. Maloney and
3 Ms. Benett. Was there a deliberate decision for you not to
4 sign this letter?

5 THE WITNESS: No.

6 THE COURT: Typically, all the firms are listed -- all
7 the lawyers, excuse me, are listed under your firm name.

8 THE WITNESS: No, there was no deliberate decision.
9 What I can tell you is it was Duke who was doing the
10 investigation, later Megan prepared the declarations.

11 THE COURT: Could you be sure to speak into the
12 microphone.

13 THE WITNESS: I'm sorry.

14 THE COURT: That's OK. Duke prepared the
15 investigation.

16 THE WITNESS: With the mask, it's even more difficult.

17 To answer the question is those were my three partners
18 who were really handling the details of this. And to put it in
19 context so you know where I was and what I was doing, my
20 principal focus this last -- or a principal focus, the very end
21 of July and August was getting the 26 team review publicly
22 released, as Joe Biden did on 9/11, and getting a process under
23 way for declassification of the FBI documents. So we had a
24 division of labor.

25 I had the discussion with Duke and John and Steve and

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Kreindler - Cross

1 Megan about the leak, and since I had no idea and was confident
2 no one at the firm was doing it, this matter of communicating
3 with your Honor and providing information, other additional
4 information, you wanted was really being handled by Duke,
5 Steve, and Megan, and my focus was seeing that the FBI
6 documents would begin to come out in a public way by 9/11.

7 THE COURT: So you don't have a specific recollection
8 of electing not to be on this letter?

9 THE WITNESS: Correct.

10 THE COURT: OK. You can proceed.

11 BY MR. HANSEN:

12 Q. So if we go to July 29, Mr. Kreindler, on that date two of
13 the four Plaintiffs' Executive Committee firms, without court
14 order, put in detailed proof, including sworn statements from
15 everybody at their firms who had access to the transcript, and
16 they described their internal investigations. And I'm
17 referring specifically to Cozen, O'Connor and Motley Rice.
18 Were you aware they had done that?

19 A. Yes.

20 Q. Why didn't you do it?

21 A. Our approach and the approach of some the other firms was
22 to provide the information that the Court requested. If the
23 Court wanted more information, we would provide it. But in the
24 history of this case, I can tell you that oftentimes, maybe on
25 a daily basis, we'll have disagreements in the committee about

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Kreindler - Cross

1 how to respond to any of the 12 balls that were up in the air.
2 So half the committee said, we're going to do more than the
3 judge wanted; the other half said, let's give the judge what
4 she wants. If she wants more, we'll provide it. It was just a
5 difference in approach.

6 Q. Actually, the third firm, Anderson Kill, went ahead and did
7 the same as the other two firms on August 13, and they
8 announced they were doing this voluntarily and not in response
9 to a court order. You recall that?

10 A. Yes.

11 Q. So three of the four firms wanted their names cleared. Why
12 didn't you want your name cleared?

13 MS. KIRSCH: Your Honor, I'm sorry if I missed a
14 moment. Of course, the order for declarations came down on
15 August 12, which is prior to Anderson Kill's submission, so the
16 record should be clarified.

17 MR. HANSEN: No, the record shouldn't be clarified.
18 She's not testifying. In fact, they put their thing in, and
19 they said they weren't doing it in response to the court order.
20 And he knew that and testified. Now his lawyer wants to change
21 the testimony. This is improper, your Honor.

22 THE COURT: I think the record here is clear. So to
23 the extent that is an objection, it's overruled.

24 BY MR. HANSEN:

25 Q. OK. Mr. Kreindler, why don't you answer my question.

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Kreindler - Cross

1 A. I'm sorry. So what's the question?

2 Q. Three of the four firms in the Plaintiffs' Executive
3 Committee welcomed an investigation and provided extensive
4 proof of their noninvolvement?

5 THE COURT: Mr. Hansen, I wouldn't characterize how
6 the other firms -- whether they were welcoming it or not. They
7 made their filings. The record reflects that.

8 MR. HANSEN: Thank you, your Honor. I'll rephrase.

9 Q. Three of the four firms submitted sworn testimony from
10 every person at the firm who had the Al Jarrah transcript and a
11 sworn declaration describing their internal investigation.

12 A. Uh-huh.

13 Q. Why wouldn't you also want to prove that you had nothing to
14 hide here?

15 MS. KIRSCH: Objection. That's just not true. The
16 declarations and the description were filed in response to the
17 court order.

18 THE COURT: I don't think that was the question. But
19 can you rephrase your question, and then I think in five
20 minutes we're going to break. So find an appropriate place for
21 a break.

22 MR. HANSEN: I'll make my question nice and simple.

23 Q. With all of your colleagues submitting sworn testimony from
24 every person who had access to the transcript and sworn
25 testimony about what they had done to investigate, what

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Kreindler - Cross

1 possible reason was there for Kreindler & Kreindler to not
2 provide that proof other than Kreindler & Kreindler had
3 something to hide?

4 MS. KIRSCH: Asked and answered.

5 THE COURT: You can answer it.

6 A. Sure. It has nothing to do with having something to hide
7 because we had nothing to hide.

8 The short answer is the way we operate -- I operated,
9 my dad, most of the partners -- is kind of the KISS principle.
10 The judge asked for something narrow. We all gave our word
11 that we had nothing to do with it. We had Duke do an internal
12 investigation, and I'm -- we decided, let's keep it simple. If
13 the Court wanted more information like some other of the other
14 firms were providing, or anything else, we'd comply. But we
15 were doing what the Court asked and keeping it simple. It had
16 nothing to do with trying to hide anything, because there is
17 nothing to hide.

18 Q. Wait a second. Your answer just a minute ago you said we
19 had all "given our word" that we had nothing to do with it, but
20 you answered my prior question saying you're not aware of
21 anybody ever directly asking Mr. Fawcett whether he leaked the
22 transcript. How do you reconcile those two statements?

23 MS. KIRSCH: Objection.

24 THE COURT: What's the objection?

25 MS. KIRSCH: It's a compound question, it

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Kreindler - Cross

1 mischaracterizes prior testimony, and it's misleading.

2 THE COURT: Overruled.

3 A. Because in everything John said to me, I was certain that
4 he had nothing to do with it. And for him to -- it never would
5 be possible, in my mind, for him to have something to do with
6 it. And that's why we were talking about the only conceivable
7 party who might have wanted this to get out was Saudi Arabia
8 months before the attention of 9/11.

9 Q. On August 12 the Court orders you to provide sworn
10 testimony because the circumstantial evidence suggests
11 Kreindler & Kreindler is the leak. Do you recall that order?

12 A. I recall the order.

13 Q. And the Court ordered, at a minimum, that you provide
14 declarations from four named attorneys. Remember that?

15 A. Yes.

16 Q. It didn't limit you to four attorneys, did it?

17 A. I don't think there was any limitation. It just said
18 provide declarations from myself, Steve, Megan, and Duke.

19 Q. And you were perfectly free to provide additional
20 declarations from people who had the transcript, weren't you?

21 A. I'm not aware of who else had the transcript.

22 Q. How about Mr. Fawcett?

23 A. Oh, from John? OK. So what -- I'm sorry. I don't
24 understand what your question is.

25 Q. You had every right to not do the bare minimum, but to

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Kreindler - Cross

1 provide full declarations from everyone at Kreindler &
2 Kreindler who you know had access to the Al Jarrah deposition
3 transcript, correct?

4 A. I guess we could provide unlimited depositions from
5 everybody if we wanted to.

6 Q. That's not my question, but I think you understand the
7 point.

8 On August 16 --

9 A. Can I respond to that comment?

10 Q. On August 16, Mr. Kreindler, what you submitted --

11 THE COURT: You'll have an opportunity on redirect.

12 Q. -- was bare one-and-a-half-page boilerplate denials from
13 you, Mr. Pounian, Mr. Maloney, and Ms. Benett, correct?

14 A. I would not call it bare boilerplate. I would say we
15 answered the question that the judge asked truthfully. You're
16 the one who's calling it bare boilerplate.

17 Q. You didn't provide any IT declaration, did you?

18 A. I don't think so, no.

19 Q. You didn't provide any description of whatever internal
20 investigation you'd supposedly done?

21 A. I don't think we did.

22 Q. You didn't disclose to the Court that everybody with
23 employee login access could have gotten that transcript?

24 A. It is probably dozens of people who could have gotten the
25 transcript, from translators, all the tech people doing the

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1 video depositions.

2 Q. I'm talking about Kreindler & Kreindler employees.

3 A. OK.

4 Q. You didn't disclose to the Court on August 16 that anybody
5 with employee login credentials could have accessed the
6 Al Jarrah transcripts, right?

7 A. All I can tell you is we provided the information that the
8 Court asked for.

9 MR. HANSEN: Your Honor, would now be a good time to
10 break? I know you wanted to break at 1:00.

11 THE COURT: OK. Let's take a break. As I indicated,
12 I'd like counsel back in the room by 1:45 so we can begin
13 questioning again at 2 o'clock.

14 MR. HANSEN: Thank you, your Honor.

15 MR. GERBER: Your Honor, a quick procedural question.

16 THE COURT: Yes.

17 MR. GERBER: Is it permissible for the attorneys here
18 in the courtroom to have lunch with our client? Obviously, we
19 will not be discussing the substance of the testimony. We just
20 want to get clarity from the Court on --

21 THE COURT: I don't mind you having lunch with your
22 clients, but not to discuss the subject of the testimony.

23 MR. GERBER: All right. Thank you, your Honor.

24 THE COURT: Enjoy your lunch, everybody. We'll see
25 you back here at 1:59. (Lunch recess)

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AFTERNOON SESSION

2:00 p.m.

THE COURT: Good afternoon, everybody. Please be seated.

I hope everybody had some lunch, even if it wasn't a great lunch.

Mr. Kreindler, I will remind you that you are still under oath.

THE WITNESS: Yes, your Honor.

THE COURT: Mr. Hansen, your witness.

BY MR. HANSEN:

Q. Mr. Kreindler, on August 30, the court issued an order. Did you read that order?

A. I read all the court's orders, yes.

Q. So, you learned on August 30 that Kreindler & Kreindler was going to have to put in a sworn declaration from John Fawcett, didn't you?

A. Yes. Offhand, I don't remember the date, but that's right.

Q. If the order provided on August 30, you read it on August 30, right?

A. Correct.

Q. You didn't wait days to read court orders?

A. No.

Q. So you knew on August 30 you had to get a Fawcett sworn statement. Did you go to him on August 30 and ask him to sign

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1 a sworn statement?

2 A. I did not.

3 Q. Did you ever ask him to do so?

4 A. No. I said, as I mentioned earlier, Megan and Steve and
5 Duke were handling it.

6 Q. Well, we have evidence that other members of your team were
7 asked to sign, and did sign, sworn declarations as early as
8 September 2nd. And I would ask you to look at Exhibit 62B.

9 A. Hang on a second.

10 Q. 62B.

11 A. Sorry. It's a big book.

12 Q. 62B, as in boy.

13 A. OK.

14 Q. I am just interested in the signature page and the date.

15 THE COURT: I will just remind Mr. Kreindler that the
16 person who signed this is known as Consultant-1 in the public
17 record.

18 THE WITNESS: Yeah. What I have in front of me does
19 not have a signature page. It's blacked out.

20 THE COURT: OK.

21 Q. But there is a date of September 2, 2021, right?

22 A. On the one I have, the date is partly blacked out. It
23 could be September 2nd.

24 Q. And it was for a person identified as Consultant-A?

25 THE COURT: I believe it was Consultant-1.

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1 MR. HANSEN: I'm sorry, your Honor.

2 Q. Consultant-1, Mr. Kreindler?

3 A. I don't see Consultant-1 on here. Maybe I am looking at
4 the wrong page. 62B, it's declaration of blank redacted.

5 Q. Well, that's not important. It's a declaration for use in
6 this proceeding about the transcript leak, isn't it?

7 A. Yeah.

8 Q. It's got a date of September 2, 2021, doesn't it?

9 A. I'm not being difficult with you, but on this page the date
10 is partly blacked out.

11 Q. It's a single digit, how about that?

12 MS. KIRSCH: Your Honor, this is not Mr. Kreindler's
13 declaration. There is no foundation that he had any experience
14 with this document.

15 THE COURT: Well, it's a declaration that was filed by
16 the law firm in response to the court's order.

17 MS. KIRSCH: Correct.

18 THE COURT: So I think Mr. Hansen is just asking a
19 question about what is on this declaration. And if Mr.
20 Kreindler can't identify it because of a redacted version, I
21 don't know if we have an unredacted version or whether the
22 parties can stipulate to the date of this.

23 MS. KIRSCH: Your Honor, I understand that this was
24 filed by the law firm, but that's a different matter from
25 whether Mr. Kreindler was involved in the process of obtaining

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1 the declaration itself. There is no indication that he would
2 know anything about this document.

3 MR. HANSEN: That's what I am trying to figure out.

4 THE COURT: Can we stipulate that this declaration is
5 signed September 2, 2021?

6 MR. HANSEN: I hope so.

7 MS. KIRSCH: Yes, I will stipulate to that.

8 THE COURT: Mr. Kreindler, it's signed. I know it's
9 blacked out partially, but the date that you could partially
10 see is September 2, 2021.

11 THE WITNESS: OK.

12 BY MR. HANSEN:

13 Q. So the question, Mr. Kreindler, if you know, is whether a
14 similar declaration was prepared for Mr. Fawcett on or about
15 September 2, 2021?

16 A. I don't know.

17 Q. Why would it be prepared for one member of your team and
18 signed on September 2 and not for Mr. Fawcett?

19 MS. KIRSCH: Objection.

20 Q. If you know.

21 A. I don't know. I'm not even sure whose declaration this is.

22 Q. When, to your knowledge, was Mr. Fawcett first asked to
23 give a sworn statement in response to the court's order
24 requiring him to do so, dated August 30, 2021?

25 A. I don't know.

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1 Q. Did you ever go to him and say, John, we are going to need
2 a sworn declaration from you, let's get it done?

3 A. No.

4 Q. Did you ever talk to him about it?

5 A. I talked to him about the Isikoff article the day we saw
6 it.

7 Q. I am talking about a sworn statement.

8 A. No, I never talked to him about a sworn statement.

9 Q. As the team leader, didn't you think it was important, in
10 response to the August 30 court order, to go to everyone
11 covered by that order and make clear that they were going to
12 have to submit sworn testimony in this proceeding?

13 A. It's important, but that doesn't mean I am going to be
14 doing everything; we divied up responsibilities.

15 Q. Mr. Kreindler, after the court's August 30 order, which is
16 going to reveal the evidence we now know today, Yahoo News
17 filed a motion with the court to either stop or substantially
18 limit the court's investigation into what happened. Do you
19 recall that?

20 A. Yes.

21 Q. You personally supported that motion, didn't you?

22 A. I really had very little to do with it, but I thought sure.

23 Q. Let's put on the screen Exhibit 51. This letter you did
24 sign. You didn't delegate it to one of your subordinates.

25 September 9, 2021. Let's go to the second page. That's your

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1 electronic signature, right?

2 A. Yes, it is.

3 Q. Let's go to the first page. Isn't the substance of this
4 letter you supporting Yahoo News' motion?

5 A. Let me just see it for a second.

6 Yes. This is our letter saying we think the order
7 should be modified.

8 Q. You're supporting Yahoo News' motion, correct?

9 A. To modify the court's order, yes.

10 Q. And this one you think is important to sign yourself,
11 right?

12 A. Sure.

13 Q. In this one, you again make your statement that materials
14 shouldn't be covered by these protective orders, which you have
15 otherwise called disgusting in other places?

16 A. I'm sorry. What are you pointing out to me in this letter?

17 Q. Don't you also say in this letter that you think materials
18 covered by the protective order shouldn't be covered?

19 A. I say exactly what you say. We have argued in favor of
20 public access to all judicial materials.

21 Q. And you again disparage the two protective orders, don't
22 you?

23 A. In this letter, no.

24 Q. But the Yahoo -- by the way, which other of your
25 plaintiffs' firms joined you in this request to squash or

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1 limit, the Yahoo News' motion, the court's investigation?

2 A. I don't know from memory.

3 Q. The answer is zero, right?

4 A. If you say so.

5 Q. Well, do you remember any other firm joining you in support
6 of Yahoo News' motion to try and obfuscate or obstruct the
7 court's investigation?

8 MS. KIRSCH: Objection.

9 THE COURT: Overruled.

10 A. I don't. And I will tell you exactly why my --

11 Q. I don't need why. It's a "what" question. Did anybody
12 else join you in your efforts to support the Yahoo News motion?

13 A. Not that I recall.

14 Q. So another couple of questions and we will be done.

15 You submitted a declaration as demanded by the court
16 in its August 30 order. It's at 56A, and I will get that up in
17 front of you.

18 We have talked at some length this morning about what
19 you did and didn't do to try and be accurate in what you were
20 submitting to the court, but isn't it true, Mr. Kreindler, that
21 this declaration is false or misleading?

22 A. I do not believe it's false and misleading. If there is
23 something that concerns you, please point it out to me.

24 Q. Let's go to page 3.

25 You say, underlined, "I never discussed the content of

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1 the Jarrah deposition with Isikoff or anyone acting on his
2 behalf."

3 Do you see that?

4 A. Not yet. Oh, yes, I see it now.

5 Q. Those are your words, correct?

6 A. Yes. Correct.

7 Q. In fact, you talked with Mr. Isikoff on his podcast about
8 what he characterizes as three principles, including Bayoumi,
9 Thumairy, and Jarrah by name, correct?

10 A. Are you asking me if he referred to Jarrah, Bayoumi, and
11 Thumairy by name?

12 Q. Yes.

13 A. I think so. I don't specifically remember it.

14 Q. And you claimed, again in the podcast, and we played the
15 podcast, I am quoting here, you claimed you "exposed all kinds
16 of lies" in the sworn and sealed testimony.

17 Do you recall saying that?

18 A. Yes.

19 Q. In fact, that's content of depositions, isn't it?

20 A. No. It's my characterization, my opinion of what we
21 accomplished during the deposition.

22 Q. It's not an opinion, it's what the witnesses supposedly
23 said, isn't it?

24 A. Not supposedly, what they did say.

25 Q. I see. Now you're communicating the truth about these

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1 sworn depositions. And that's what you do, Mr. Kreindler, you
2 decide what is OK to communicate, even though you are
3 purporting to communicate things that you are not allowed by
4 order to try and communicate, correct?

5 MS. KIRSCH: Objection. It's argumentative. It
6 misstates facts and six other things.

7 THE COURT: Sustained.

8 Rephrase the question, Mr. Hansen.

9 Q. I will just ask it very simply, Mr. Kreindler.

10 When you say that you exposed all kinds of lies, in
11 the sworn sealed testimony, are you telling this court under
12 oath that this isn't purporting to communicate content from the
13 depositions?

14 A. It is not communicating the content of what anyone said.
15 It is me saying to Mike Isikoff that we accomplished what we
16 hoped to accomplish, and pointing out -- now I am struggling
17 because there are things I can't say, but it is me
18 communicating to Mike Isikoff that the depositions were a
19 success because we got witnesses to contradict each other,
20 lies, etc. It is my absolute belief that I said nothing about
21 the content of what any of the witnesses said because I wasn't
22 allowed to.

23 Q. How about when you said to Mr. Isikoff on the air, "One
24 witness will contradict another." That was content too, wasn't
25 it?

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1 MS. KIRSCH: Objection.

2 THE COURT: Basis.

3 MS. KIRSCH: Asked and answered.

4 THE COURT: Overruled.

5 You can answer it.

6 A. I do not believe that's content. That's characterization,
7 in my opinion.

8 Q. How about when you said, "Each person wants to minimize
9 their own role and point fingers at others." That was content
10 too, wasn't it?

11 A. No.

12 Q. How about when you claimed you had a "smoking gun or guns,"
13 that's content too, right?

14 A. No.

15 Q. How about when you said Mr. Isikoff said it sounded like "a
16 confession," but then you responded by saying, "No, not a
17 confession," but it was still "damning dramatic." That's not
18 content either?

19 A. No. It's a characterization that it's damning and
20 dramatic. It is not the content because I am not allowed to
21 talk about the content.

22 Q. Let's look at another part of your declaration. You said
23 in your declaration under oath that no one other than people at
24 your firm who had submitted sworn statements on the 27th of
25 September had access to the deposition transcripts, correct?

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1 A. That's what I said in my declaration?

2 Q. Let's put it on the screen so we are all looking at the
3 same thing. 56A, pages 3, 4.

4 THE COURT: Mr. Hansen, to the extent you are going to
5 read anything, can I remind you to speak more slowly, please.

6 MR. HANSEN: I apologize for my speed.

7 Let's get to the right place. This is the last page
8 carry-over. I am going to discipline myself to try not to
9 rush.

10 Q. It says, "State every person that they know had access to
11 the deposition transcripts who has not already supplied a
12 declaration in this investigation." And you answered "none."

13 Do you see that?

14 A. Yes.

15 Q. Now, I don't want to go back and do all the questions we
16 did this morning, but I think we established this morning that
17 you had no idea who within Kreindler & Kreindler had access to
18 the deposition transcripts. Isn't that true?

19 MS. KIRSCH: Objection. He can point to the testimony
20 if that's what he wants to do. I don't know what he is talking
21 about.

22 THE COURT: You don't know?

23 MS. KIRSCH: He is purporting to quote earlier
24 testimony. If he wants to purport to quote earlier testimony
25 of Mr. Kreindler, he can show us the earlier testimony.

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1 THE COURT: Overruled.

2 You can continue.

3 A. I'm sorry. Your question is?

4 Q. I will ask it again so we are not confused. And I won't
5 characterize your prior testimony.

6 What was your basis, your basis for giving a sworn
7 statement that no one other than the people from Kreindler &
8 Kreindler, who had provided sworn declarations on September 27,
9 had, quote, access to the deposition transcripts?

10 A. Again, I am relying upon my partners who were working on
11 this.

12 Q. Who told you that?

13 A. We had a -- we talked about the declarations. Duke told
14 everyone about his --

15 Q. Who told you that the only people at Kreindler & Kreindler
16 who had access to deposition transcripts were those that
17 submitted declarations? Real simple.

18 MS. KIRSCH: Objection. Mr. Hansen is respectfully
19 misreading the sentence. If he wants to go back and read the
20 sentence in Mr. Kreindler's declaration, he can do that, but
21 let's not skip words, let's read the whole sentence.

22 MR. HANSEN: Can you put it up again?

23 THE COURT: The "they" here is the firm Kreindler &
24 Kreindler?

25 MR. HANSEN: It's Mr. Kreindler responding to this.

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1 MS. KIRSCH: Respectfully, your Honor, the "they" is
2 not the firm. This is for each person to answer these
3 questions.

4 MR. HANSEN: He is the affiant here. It goes to his
5 knowledge.

6 THE COURT: The "they" is the affiant.

7 MR. HANSEN: It's got to be.

8 MS. KIRSCH: "They" is the affiant.

9 MR. HANSEN: They can't be an affiant.

10 MS. KIRSCH: Actually, nowadays it is.

11 BY MR. HANSEN:

12 Q. Mr. Kreindler, did you understand yourself to be giving an
13 affidavit here in this sworn statement?

14 A. Yes.

15 Q. Were you answering this as to your own personal knowledge?

16 A. Yes.

17 Q. In response to my prior question, you said someone told you
18 the information that gave you the basis to answer this last
19 question the way you answered it. The last question is, who
20 was the person who told you that?

21 A. Now looking at it, I understand it. "They," in this case,
22 being me. I read the question asking me, state every person
23 who they, Jim Kreindler, shared the deposition transcript with.

24 Q. Wrong question. They had access. The question was about
25 access.

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1 A. I'm saying, from my personal knowledge, I didn't know that
2 someone had access other than my partners who we have been
3 talking about.

4 Q. That's still not answering my question. In response to my
5 earlier question, you said someone had provided you information
6 that gave you what you considered to be a valid basis for
7 giving this answer. So who is the someone?

8 A. Now we have got to -- I am looking at the question now.
9 Let me answer it as I see it and understand it now.

10 State every person that I knew had access to the
11 deposition transcript who has not already supplied a
12 declaration. I didn't know of anyone who had access other than
13 my partners who were supplying declarations.

14 Q. What did you do to inform yourself as to who actually did
15 have access before you provided this sworn testimony to the
16 court?

17 A. We are talking in circles because I understand this to mean
18 who did I personally know had access, and I didn't know of
19 anyone else.

20 Q. Did you ask Mr. Hartney if this was an accurate statement?

21 A. No, because I am answering from my personal knowledge.

22 Q. I will give you a hypothetical, Mr. Kreindler. If you had
23 been told by Mr. Hartney before submitting this that, in fact,
24 everybody with employee log-in credentials at Kreindler &
25 Kreindler had at least access to these transcripts, would you

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1 answer this question this way?

2 MS. KIRSCH: Objection. It's an improper
3 hypothetical.

4 THE COURT: Overruled.

5 A. I think I would have tried one way or another to get it
6 clarified so that I can answer the question properly. So if
7 someone came to me and said, John Hartney knows that everybody
8 in the firm had access to the deposition, when looking at this,
9 I would have discussed it with my partners and tried to figure
10 out if we should seek clarification or I should answer it the
11 way I understand it, so that there is no mistake or
12 misunderstanding.

13 Q. So one last question on this topic.

14 What, if anything, did you do to inform yourself about
15 who actually did have access before you gave this sworn
16 statement to the court?

17 A. Since I understood this question to refer to my personal
18 knowledge, I didn't do anything to find out if people who I
19 didn't know about had access.

20 Q. All right. Just some wrap-up questions, Mr. Kreindler.

21 You have already said in your declaration that you
22 never instructed anyone, including Mr. Fawcett, to turn over
23 the sealed transcript to Mr. Isikoff or anyone else. But given
24 your press strategy, your corrosive statements about protective
25 orders being disgusting and your own personal violation of

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1 protective orders in 2017, as well as what we have shown today,
2 there is substantial reason to doubt your word on that, isn't
3 there?

4 A. None whatsoever. And your question contains statements
5 that are not true.

6 Q. You still dispute that you were found guilty of a
7 protective order violation in 2017?

8 MS. KIRSCH: Objection.

9 THE COURT: He doesn't need to answer the question.

10 Q. You didn't even need to give an express instruction to Mr.
11 Fawcett to make this leak happen, did you?

12 A. That's nonsense. I have no idea the leak could happen, and
13 the leak was antithetical to what we were trying to proceed.

14 Q. According to your testimony, you didn't have an idea about
15 a lot of what was happening, correct?

16 MS. KIRSCH: Objection.

17 THE COURT: Sustained.

18 Q. Mr. Fawcett knew what you wanted, and he did what you
19 wanted, and that's why we are here today, isn't that right?

20 A. No.

21 MS. KIRSCH: Objection.

22 THE COURT: Overruled.

23 A. That is absolutely 100 percent false and has no relation to
24 reality.

25 MR. HANSEN: No further questions, your Honor.

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1 THE COURT: Thank you.

2 Ms. Kirsch, are you ready or would you like a moment?

3 MS. KIRSCH: I would like a moment.

4 THE COURT: We will take a quick two-minute recess.

5 (Recess)

6 THE COURT: Ms. Kirsch, your witness.

7 REDIRECT EXAMINATION

8 BY MS. KIRSCH:

9 Q. Mr. Kreindler, good afternoon.

10 There was some discussion earlier about the protective
11 orders in this case, correct?

12 A. Yes.

13 Q. You were asked, or the point was made that you personally
14 have not made a motion to lift those protective orders. Can
15 you tell me, have you ever considered making such a motion?

16 A. Yes. More than considered it. We had it drafted and under
17 discussion for really quite some time, as we, the committee,
18 tried to formulate the best motion to bring. We never filed
19 it, actually, because at the time we were ready to file, in the
20 lead up to 9/11, we knew that there was going to be an
21 Executive Order, which, in fact, Joe Biden issued on September
22 4th. And, as you know, that Executive Order mandated that the
23 2016 review be given to us and the public, mooted any orders
24 from DOJ as to that, and providing for declassification of
25 other 9/11 documents, which is going to happen tomorrow.

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1 Now, tomorrow we don't know what will be released and
2 whether there will be redactions or how many, but tomorrow we
3 expect a lot of what we have and have had to keep secret to be
4 made public. I should also add that I talked to a number of
5 people in the Administration about this to suggest that they do
6 it on their own.

7 Q. So I wanted to turn your attention briefly, there should be
8 a witness book of exhibits by the Kreindler firm, not that big
9 book.

10 A. This is the only one up here now.

11 MS. KIRSCH: Your Honor, may I approach?

12 THE COURT: Yes.

13 A. Thank you. OK.

14 Q. I am going to ask you to flip all the way to the back, if
15 you would, to Exhibit 102.

16 A. Yes.

17 Q. Do you see that this is the July 23rd motion filed by the
18 Kingdom of Saudi Arabia in relation to getting some discovery
19 and looking into the Isikoff leak. Do you see that?

20 A. Yes.

21 Q. If you turn a few more pages, there is a document that is
22 the declaration of Michael Kellogg, Exhibit D3 to that filing.
23 Do you see that?

24 A. Yes.

25 Q. And then I am going to turn you to what looks like Exhibit

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1 D3-A, which is an e-mail from Mr. Isikoff to Mr. Kellogg. Do
2 you see that?

3 A. Yes.

4 Q. I am going to give you a moment to look at that e-mail and
5 ask you whether you recognize the quotation that Mr. Kellogg is
6 being asked to comment on, the quotation that is attributed to
7 you.

8 A. Yes.

9 Q. Is that a quotation that you said on the podcast?

10 A. Yes.

11 Q. We actually just heard the podcast with you saying these
12 very words?

13 A. Right.

14 Q. And that podcast aired on July 10, correct?

15 A. Yes.

16 Q. This was filed on July 23, is that correct?

17 A. Yes.

18 Q. So if you look back, the previous page of Mr. Kellogg's
19 declaration filed in support of his motion, you will see the
20 very last sentence says, "A true and correct copy of a July 5,
21 2021 e-mail from Mr. Isikoff to me is attached as Exhibit A."

22 Do you see that?

23 A. Yes.

24 Q. And does Mr. Kellogg in his statement to the court advise
25 the court that this is a publicly made statement?

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1 A. No.

2 Q. Does Mr. Kellogg advise the court that this was a podcast
3 that had aired two weeks prior that Mr. Kellogg was offered the
4 opportunity to comment on?

5 A. No, he does not.

6 Q. Does Mr. Kellogg provide in his declaration to the court
7 any context about this e-mail whatsoever to help the court
8 understand what it is?

9 A. No.

10 Q. I wanted you now, can we just flip to what is Exhibit 29 in
11 our book?

12 A. Sure. OK.

13 Q. By the way, Mr. Kreindler, do you think it would have been
14 helpful to the court to understand that Mr. Isikoff is asking
15 Mr. Kellogg to comment on a publicly made statement as opposed
16 to something that may have been said privately?

17 A. Yes.

18 Q. If we look at Exhibit 29, that cover page, this is the
19 August 16 filing made by the Kreindler firm in response to the
20 court's order. Do you see that?

21 A. Yes.

22 Q. And your declaration, Mr. Kreindler, is the second one.
23 It's labeled page 5 of 10 at the top. If we could take a look
24 at that.

25 A. Yes.

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1 Q. Now, the two introductory paragraphs we are going to skip
2 over.

3 Paragraph 3. "I obtained a copy of the rough
4 transcript of the Jarrah deposition at the end of each day that
5 he was deposed and a final copy of the transcript from both
6 days of the Jarrah deposition on June 28 from Golkow Litigation
7 Services, both in unredacted and a redacted copy."

8 Do you see that?

9 A. Yes.

10 Q. Is that a true and accurate statement, Mr. Kreindler?

11 A. Yes.

12 Q. Paragraph 4. "On July 7, Golkow Litigation Services sent
13 an e-mail with links to the video of the Jarrah deposition."

14 Is that a true statement, Mr. Kreindler?

15 A. Yes.

16 Q. "At no time did I share the Jarrah deposition transcript or
17 videos with anyone unauthorized to see it under the protective
18 order and the FBI protective order."

19 Is that a true statement?

20 A. Yes, it is.

21 Q. "At no time did I direct anyone to share the Jarrah
22 deposition transcript or videos with anyone unauthorized to see
23 it under the protective order and the FBI protective order."

24 Is that a true statement?

25 A. Yes.

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1 Q. "To my knowledge, no one with the Kreindler firm or anyone
2 acting on its direction shared the Jarrah deposition transcript
3 with anyone unauthorized by the protective order in the FBI
4 protective order."

5 Is that true statement?

6 A. Yes.

7 Q. In your opinion, Mr. Kreindler, is there anything about
8 this that is misleading?

9 A. No.

10 Q. Is there anything in this declaration that is incomplete?

11 A. No.

12 Q. Is it your opinion that this is what the court had asked
13 for the declarations to opine on?

14 A. Yes.

15 Q. If you could flip to Exhibit 87 in our book also, Mr.
16 Kreindler.

17 A. Sure.

18 Q. This is the September 27 filing that was made by the
19 Kreindler firm. Do you see this?

20 A. Yes.

21 Q. We spent some time on this on your cross-examination, or
22 Mr. Hansen did.

23 If you look at page 3 of 53 through 6 of 53.

24 A. OK.

25 Q. That's your declaration, is that true?

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Kreindler - Redirect

1 A. Yes.

2 Q. If you would start with paragraph 5 which refers -- let's
3 go back to paragraph 4.

4 "I learned on July 15th." So you learned the day the
5 article came out, you learned that there had been a leak of the
6 Jarrah transcript, is that right?

7 A. Yes.

8 Q. And that was discussed with others from the Kreindler firm
9 working on the 9/11 litigation, correct?

10 A. Yes.

11 Q. On that call, Mr. Kreindler, was there a discussion of
12 whether any of the participants of that call, the Kreindler
13 9/11 team, was there a discussion as to whether any of you had
14 any knowledge of how the Jarrah transcript was transmitted to
15 Mr. Isikoff?

16 A. Yes.

17 Q. Can you tell me what that discussion entailed?

18 A. Sure. It was each of us saying, I have no idea how this
19 could have happened, does anybody have any ideas? And going
20 around in the group saying the same thing. Where did this come
21 from? And this is not good for us. Any clue?

22 Q. If you look at paragraph 5 -- well, let me just finish that
23 question. I assume the takeaway was that everyone indicated
24 that they had no knowledge, is that true?

25 A. Yes. We all had no knowledge, and then there was some

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Kreindler - Redirect

1 speculation as to who might have done it. Is it possible for
2 somebody in the technical group to do it? I volunteered, I
3 said, the only entity that might have done it that would make
4 sense would be the Saudis, to get it out now before 9/11 when
5 there is great media attention, if it's going to come out
6 anyway. But other than that guess, speculation, no one had any
7 idea where it could have come from.

8 Q. Mr. Kreindler, was Mr. Fawcett on that call?

9 A. I think so.

10 Q. Was it your takeaway that Mr. Fawcett was one of the many
11 who said he had no idea how this could have happened?

12 A. Yeah. What I distinctly remember more than the call was
13 our in-person discussion in the office. But, yeah, John, to me
14 seemed as surprised as everyone.

15 THE COURT: Who was involved in that in-person
16 discussion?

17 THE WITNESS: The sequence, your Honor, I read it at
18 home, got to the office later. The first people I spoke to
19 were Duke and John. And I think, we can check the dates, that
20 Steve was doing a deposition that day. I'm not positive, but I
21 remember him being tied up and I think then later talked to
22 Megan. And in an earlier call, we decided that, as of that
23 moment, Duke would lead the investigation into all the computer
24 stuff and who could have had access or e-mailed Mike Isikoff.

25 Then, later that day we had a call with the whole PEC.

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Kreindler - Redirect

1 First, we had an internal Kreindler call and then a PEC call a
2 little later that day. The specific question, I don't
3 distinctly remember John being on the PEC, but he might have.
4 I just don't remember. But I do remember the personal
5 discussions with him in the office face-to-face.

6 THE COURT: Thank you.

7 BY MS. KIRSCH:

8 Q. Mr. Kreindler, when you pulled together this declaration
9 that was filed on September 27, did you make your best efforts
10 to ensure that every statement here was accurate and not
11 misleading?

12 A. Of course.

13 Q. In your opinion, sitting here today, is any of it
14 inaccurate?

15 A. No.

16 Q. Or misleading?

17 A. No, not at all.

18 Q. It says on page 6 of 53, at paragraph 7, "For the first
19 time today" -- which is September 27 -- "I learned the
20 information set forth in the declaration of John Fawcett."

21 Is that a true statement?

22 A. It is. Later that afternoon.

23 Q. Mr. Kreindler, as a general matter, how often did you
24 communicate with Mr. Fawcett in the course of your work on this
25 case?

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Kreindler - Redirect

1 A. Probably more than I talked to my wife. 9/11 is all I do,
2 what John was working on. There were times when John's
3 attention was needed by one of my partners, getting ready for a
4 deposition, but I would talk to John all day. I can't say I
5 spoke to him every single day, but constantly.

6 Q. Would you say you spoke to him most days?

7 A. Oh, sure. Many times at night, I would wake up at 3 in the
8 morning with an idea, shoot him a message. And sometimes it's
9 still dark when I hear from John, get your first cup of coffee,
10 and we would talk about something. But it's constant. We were
11 working on the Saudi case all the time, every day.

12 Q. Did you communicate with Mr. Fawcett about the protective
13 orders in this case?

14 A. Yes. Sure.

15 Q. What was the nature of those communications?

16 A. They were really two-fold. We would often talk about our
17 efforts to get these orders lifted, the motion we were working
18 on. But even long before that, I talked about these orders
19 with Kirsten Gillibrand, Chuck Schumer, Dick Blumenthal, all
20 the time, Tony Blinken, Brian McKeon, later with Jonathan
21 Cedarbaum in the NSA, DOJ people. And in talking to them about
22 our need for the FBI documents so the whole story can come out,
23 and our need once we have documents to be able to share them
24 with the families and the public so everyone can know and we
25 could really talk to our clients, I would always talk to John

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1 and say, hey, can you dig up something or other that I might
2 refer to in these communications with people in our government.

3 The other distinct area where I talked to him was what
4 we talked about before, 2017, with the phone number in the
5 letterhead of the Saudi Embassy, and that was found to be a
6 violation. And John and I -- John would deal with protective
7 stuff every day for 20 years. And that brought home to us,
8 even if we are not revealing content, you can't show a page,
9 even if it's in Arabic and no content can be communicated,
10 particularly something that's public like you could get the
11 phone number from the yellow pages.

12 So, John and I had that discussion in 2017 so that, to
13 the extent humanly possible, there would never be any violation
14 of these court orders. That was a discreet discussion. The
15 other discussion about how we can, number one, and most
16 importantly, get the documents, and that stuff I raised with
17 President Trump and others, that has been constant for these
18 last four years.

19 Q. So, is it fair to say that in the course of these different
20 types of discussions, Mr. Fawcett indicated that he understood
21 his obligations under these protective orders?

22 A. Absolutely. What we tried to do is often, if you have the
23 two versions side by side and you look at it, it's hard to tell
24 because a word is hidden in one and not the other, so before
25 sending anything public to anyone, even if I had the document

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Kreindler - Redirect

1 in front of me on my phone, I would say, John, please send me
2 the public one to be doubly sure that we are not making a
3 mistake and passing on one that we can't.

4 So John was involved in helping me try and live with
5 this procedure that everyone knows is a lot of work with the
6 two versions, in the public or not, to make sure there was no
7 mistake.

8 Q. Did Mr. Fawcett ever give any indication that he did not
9 intend to abide by his obligations under the protective orders?

10 A. Not at all.

11 Q. Did Mr. Fawcett ever act in an unprofessional manner in any
12 respect?

13 A. No. John, for almost 20 years, it will be 20 years in
14 February, John is one of the most committed -- I'm sorry -- and
15 honest and trustworthy people I ever met.

16 I'm sorry for getting emotional. I have told you this
17 story. It's neither here nor there. But I believe John came
18 to work for us the day after my dad died, and my dad died when
19 we were settling the Pan Am 103 case with Libya. We were
20 almost done, and it's like Moses dying when he is bringing home
21 the Ten Commandments. And John got to me through a high school
22 classmate, and John has been so central to the families and has
23 this unique ability to uncover and handle information. In my
24 entire life, I have never met anyone who I think of as a more
25 honest and noble person than John, with one exception, my

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Kreindler - Redirect

1 father.

2 We would not be here today, and we would not be
3 getting FBI documents tomorrow, and this coming out, if it
4 wasn't for John. And truthfully, it breaks my heart for us, to
5 the families who he has devoted 20 years of his life to, I wish
6 it didn't happen, it was a mistake, but he is such a good
7 person and so important to thousands of people. And when this
8 is over, when the whole case is over, and hopefully sooner
9 rather than later, and we all are where we want to be, he just
10 deserves so much credit for what he has done and what he has
11 given.

12 I know I am violating in talking so much, but this has
13 been my life for 20 years, and his. I had to say it. I
14 apologize for being emotional, and I apologize for diverting
15 from the specific question, but I think it just needs to be
16 said. So I'm sorry for talking too much.

17 Q. I just have a couple more questions, Mr. Kreindler.

18 A. Sure.

19 Q. Did you order or direct Mr. Fawcett to send the copy of the
20 Jarrah transcript to Mr. Isikoff?

21 A. No.

22 Q. Did you know that Mr. Fawcett was going to send the Jarrah
23 transcript to Mr. Isikoff?

24 A. No.

25 Q. Did you know at any time prior to September 27 that Mr.

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Kreindler - Redirect

1 Fawcett had sent the transcript to Mr. Isikoff?

2 A. No. I had no idea at all until I heard that afternoon.

3 Q. Did you ever have any reason to suspect that Mr. Fawcett
4 would send the Jarrah transcript to Mr. Isikoff?

5 A. None whatsoever.

6 MS. KIRSCH: I have no further questions.

7 THE COURT: Yes, Mr. Hansen.

8 MR. HANSEN: No more questions for Mr. Kreindler, your
9 Honor.

10 THE COURT: I just have one question for you, Mr.
11 Kreindler. Did you ever reach out to Mr. Isikoff and ask him
12 how he received the transcript?

13 THE WITNESS: No, I didn't. Once I saw the story, I
14 didn't say anything to anyone until we got to the office and
15 talked about what we are going to do with this revelation. But
16 I thought, we all thought that none of us should be calling
17 Mike Isikoff.

18 Q. Did anyone on the PEC side ask you, given your relationship
19 with Mr. Isikoff, to reach out to him to find out how he got
20 the transcript?

21 A. No, that never came up. And we all expect that if he was
22 ever asked, I am not going to reveal my sources.

23 THE COURT: Thank you.

24 You are excused.

25 THE WITNESS: Thank you, your Honor.

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Kreindler - Redirect

1 Can I stay in the courtroom now?

2 THE COURT: Yes, you may. In fact, you should.

3 (Witness excused)

4 THE COURT: Who is your next witness?

5 MR. SHEN: Saudi Arabia calls John Hartney.

6 (Continued on next page)

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Hartney - Cross

1 THE COURT: Mr. Shen, while we're waiting, do you have
2 an estimate of how long we'll need this witness time-wise?

3 MR. SHEN: For Mr. Hartney?

4 THE COURT: Yes.

5 MR. SHEN: Maybe an hour and a half.

6 THE COURT: Maybe an hour and a half. It's nearly
7 3 o'clock. Maybe in a half-hour, we can take a five-minute leg
8 stretch.

9 MR. SHEN: Yes, your Honor.

10 THE COURT: Hello, sir. Have a seat here. Stay
11 standing for a second.

12 JOHN HARTNEY,

13 called as a witness by the Defendants,

14 having been duly sworn, testified as follows:

15 THE WITNESS: John Hartney.

16 THE COURT: Thank you, sir.

17 CROSS-EXAMINATION

18 BY MR. SHEN:

19 Q. Good afternoon, Mr. Hartney.

20 A. Good afternoon.

21 Q. Are you currently employed for Kreindler & Kreindler?

22 A. Yes.

23 MR. SHEN: And can we show Exhibit 74, please.

24 Q. Do you recognize this as your profile in the Kreindler
25 website?

LB1H9115

Hartney - Cross

1 MS. KIRSCH: I'm sorry. Can I have a moment to look
2 at the document, please?

3 THE COURT: Sure.

4 MR. SHEN: We can do it without the document.

5 THE COURT: It's the signature line on the website.

6 MS. KIRSCH: I'm sure it is.

7 BY MR. SHEN:

8 Q. Is your title LAN administrator?

9 A. Correct. Yes.

10 Q. Sir, does "LAN" stand for local area network?

11 A. Yes.

12 Q. And how long have you had that title, sir?

13 A. Since I've been at Kreindler.

14 Q. And when did you start at the firm?

15 A. April 1991.

16 Q. Sir, do you report to Javier Cisneros?

17 A. No.

18 Q. Who's your direct supervisor, sir?

19 A. I'd say the partnership.

20 Q. The attorneys at the firm?

21 A. Yeah.

22 Q. Now, sir, you signed a declaration in this case, correct?

23 A. Yes.

24 Q. Can we see the declaration at 56F.

25 You have a binder of exhibits that are in front of

LB1H9115

Hartney - Cross

1 you. Sir, you did not draft this declaration, correct?

2 A. No.

3 Q. The lawyers at the firm drafted it for you?

4 A. Yes.

5 Q. And that was Mr. Maloney, correct?

6 A. The first one, yes.

7 Q. And Ms. Benett --

8 A. Yes.

9 Q. -- correct?

10 And Mr. Pounian also drafted the language in your
11 declaration, correct?

12 A. I believe so, yes.

13 Q. Now, sir, the lawyers at the firm, you said that you report
14 to them. They're generally in a position of authority over
15 you?

16 A. I report to the partnership.

17 Q. The partners are in a position of authority over you, sir?

18 A. Yes.

19 Q. And generally speaking, if one of those partners asked you
20 to do something, you do it, right?

21 A. Well, it matters what they're asking me to do.

22 Q. All right. Well, they asked you to sign a declaration. So
23 you reviewed the declaration, and you signed it, correct?

24 A. They asked me to sign the declaration that I felt was
25 truthful.

LB1H9115

Hartney - Cross

1 Q. Now, sir, you're generally familiar with the fact that
2 Kreindler & Kreindler is representing the plaintiffs in the
3 9/11 litigation?

4 A. Correct.

5 Q. And you're generally familiar with the fact that certain
6 material, such as documents and deposition transcripts, are
7 governed by protective orders in this action, correct?

8 A. Yes.

9 Q. Have you reviewed the MDL protective order?

10 A. No.

11 Q. You've never looked at it?

12 A. Not that I recall, no.

13 Q. Have you looked at the FBI protective order?

14 A. No.

15 Q. You've never looked at it?

16 A. No.

17 Q. You've never signed it?

18 A. No.

19 Q. You never agreed to abide by it?

20 A. No.

21 Q. Did the Kreindler firm maintain a list of the individuals
22 who had signed each of the protective orders?

23 MS. KIRSCH: Objection. Foundation.

24 THE COURT: If you know the answer, you can answer it,
25 sir.

LB1H9115

Hartney - Cross

1 THE WITNESS: Say that again.

2 THE COURT: You can answer the question if you are
3 able.

4 A. No, I do not.

5 Q. Did the IT department maintain a list of the individuals
6 who had signed the MDL and FBI protective order?

7 A. No.

8 Q. So you have no idea who at the firm had signed the MDL or
9 the FBI protective order, correct?

10 A. Correct.

11 Q. Now, sir, prior to September 27 of 2021, the protected
12 confidential material relating to the 9/11 case, they were
13 saved in electronic form in various places at the Kreindler
14 firm, correct?

15 A. Can you repeat that question?

16 Q. Sure. I'm referring to the confidential and protected
17 material relating to the 9/11 case. Those were saved in
18 various location at the Kreindler firm. I'm talking
19 electronically.

20 A. Are you saying that every document that was classified was
21 saved in different locations or --

22 Q. Classified documents were saved in different locations,
23 correct?

24 A. What do you mean by "locations"?

25 Q. One of those locations was an internal proprietary server

LB1H9115

Hartney - Cross

1 that the Kreindler firm maintained?

2 A. Yes.

3 Q. One of those locations was a cloud-based storage system,
4 correct?

5 A. Correct.

6 Q. Some of that protected information was also saved as
7 attachments to emails and were discussed in Kreindler firm
8 emails, correct?

9 A. Correct.

10 Q. They were also saved on firm or home computers used by the
11 Kreindler attorneys, correct?

12 A. I don't know.

13 Q. You don't know one way or the other?

14 A. What do you mean "one way or the other"? Of what?

15 Q. You have no idea whether any of the Kreindler attorneys
16 kept protected confidential information on their home
17 computers --

18 A. No.

19 Q. -- or on their devices, their phones? You have no idea?

20 A. No.

21 Q. You were never asked to investigate that issue?

22 A. No.

23 Q. Now, you testified that one of the places that protected
24 information is stored is on the Kreindler firm's internal
25 proprietary server. What's that server called?

LB1H9115

Hartney - Cross

1 A. The main server? The exact name, it's NYFS1.

2 Q. What do you refer to it as?

3 A. Well, there's a share on that network called Case Media.

4 Q. You refer to it as Case Media?

5 A. And there's other shares also.

6 Q. Was the 9/11 protected material stored in Case Media?

7 A. Yes.

8 Q. That includes -- well, do you know whether that includes
9 MDL-protected information as well as FBI-protected information?

10 A. I don't know.

11 Q. You just know that it's confidential, protected information
12 was stored in the Case Media server, correct?

13 A. Correct.

14 Q. Now, prior to September 27 of 2021, anybody who worked at
15 the Kreindler firm had access to the Case Media server,
16 correct?

17 A. Could you repeat that.

18 Q. Prior to September 27 of 2021, anybody who worked at the
19 Kreindler firm had access to Case Media where the protected
20 information relating to the 9/11 case was saved, correct?

21 A. Yes.

22 Q. That's all of the lawyers who worked at the Kreindler firm?

23 A. Yes.

24 Q. That's all of the staff at the Kreindler firm?

25 A. Yes.

LB1H9115

Hartney - Cross

1 Q. That is individuals like John Fawcett as well?

2 A. Yes.

3 Q. So long as you had a Kreindler login, you could access that
4 Case Media, correct?

5 A. Yes.

6 Q. So that includes people who did not work on the 9/11 case,
7 right?

8 A. Correct.

9 Q. That includes people who had never seen the FBI or the MDL
10 protective order, correct?

11 A. Can you repeat that question.

12 Q. That includes people who had never seen the protective
13 orders in this case. They had access to Case Media, too?

14 A. You mean the users that have login credentials that have
15 never seen that information?

16 Q. People who have not signed the protective orders in this
17 case, they had access to the Case Media server, too, correct?

18 MS. KIRSCH: Objection. He doesn't know who did or
19 didn't sign, so how can he answer that question?

20 THE COURT: I think the testimony is that everybody
21 who has access to the server has access to this file. Is that
22 correct, sir?

23 THE WITNESS: Correct.

24 THE COURT: OK.

25 Q. And the firm has no ability to track who actually accessed

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Hartney - Cross

1 any of the confidential and protected material saved in Case
2 Media, correct?

3 A. Correct.

4 Q. So you have no idea, for instance, whether Jim Kreindler
5 accessed the Al Jarrah transcript, correct?

6 A. On.

7 Q. On Case Media?

8 A. Correct.

9 Q. Or anybody else at the firm. You just have no idea?

10 A. Correct.

11 Q. So sitting here today, throughout the history of this case,
12 you couldn't tell the Court who accessed any confidential
13 document relating to the 9/11 case, is that correct?

14 A. That was on Case Media, correct.

15 Q. And that's where the Al Jarrah transcript was saved,
16 correct?

17 A. Correct.

18 Q. All right. Let's look at your declaration, 56F, please,
19 and I'm looking at paragraph 5.

20 Now, sir, in paragraph 5 you stated that only
21 individuals given Kreindler login credentials have access to
22 Kreindler's server. Do you see that?

23 A. Yes.

24 Q. You're referring to Case Media there?

25 A. Yes.

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Hartney - Cross

1 Q. When you say only individuals given Kreindler login
2 credentials, that's everybody at the firm, correct?

3 A. Yes.

4 Q. And then you say, "I created a directory on a network share
5 drive where the 9/11 litigation materials are saved," and then
6 you say that the Al Jarrah transcripts were saved there.

7 Do you see that?

8 A. Yes.

9 Q. Then you go on to say: I was told the following had been
10 able to access the Jarrah transcripts, and then you list a
11 number of individuals.

12 Do you see that?

13 A. Yes.

14 Q. Who told you that?

15 A. Well, I guess somebody along the way of the litigation had
16 told me that these certain individuals worked on the case.

17 Q. Who told you that only those individuals had access to the
18 Jarrah transcript?

19 MS. KIRSCH: I'm sorry. Mr. Shen needs -- if he's
20 going to ask him about the words of the declaration, please
21 quote them properly. That was --

22 THE COURT: I think the word "only" is not there.

23 MS. KIRSCH: I'm sure it was an accident.

24 BY MR. SHEN:

25 Q. "I was told the following had been able to access the

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Hartney - Cross

1 Jarrah transcripts." Those are your words, correct?

2 A. Correct.

3 Q. Actually, someone else drafted that language for you,
4 correct?

5 A. Yes.

6 Q. But you signed it under penalty of perjury?

7 A. Correct.

8 Q. Who told you the following had been able to access the
9 Jarrah transcript? Who told you that?

10 A. In particular, one particular person? I guess it would be
11 Megan Benett.

12 Q. Your best recollection is Ms. Benett told you that, is that
13 right?

14 A. Yes.

15 Q. Now, when you drafted -- before you signed this
16 declaration, you told Ms. Benett and the other attorneys that
17 everybody at the Kreindler firm had access to the Case Media
18 where the Jarrah transcript was saved, correct?

19 A. Correct.

20 Q. And, nonetheless, they urged you, and actually drafted the
21 language in your declaration, so you don't disclose that,
22 correct?

23 MS. KIRSCH: Objection.

24 THE COURT: What's the objection?

25 A. The word "urge" I wouldn't say. I signed the document that

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Hartney - Cross

1 was truthful in that the only people that should be saving
2 documents and accessing documents in that -- in that directory
3 were these individuals listed.

4 Q. Sir, you told Ms. Benett that everybody at the Kreindler
5 firm had access to everything in Case Media, correct?

6 A. Correct.

7 Q. That doesn't appear anywhere in your declaration, does it?

8 A. No.

9 Q. All right. Ms. Benett drafted your declaration, right?

10 A. Correct.

11 Q. Did she tell you that she didn't want to disclose that to
12 the court?

13 A. Yes. Well --

14 Q. Let's look, sir, at Exhibit --

15 THE COURT: Sorry. Can I ask a question, follow-up
16 question on this section before we move on?

17 MR. SHEN: Absolutely.

18 THE COURT: Would you mind putting the declaration
19 back up.

20 I was confused by a statement there. The last at the
21 same time of this paragraph 5 says: "I did not find any
22 evidence that the Jarrah transcripts had been downloaded,
23 printed, or emailed by anyone else."

24 I confess to not being the most technologically savvy
25 person, but my understanding of your declaration was that you

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Hartney - Cross

1 couldn't tell whether anyone had downloaded, printed, or
2 emailed the transcript. So one question I have is, is there
3 evidence that the people in the sentence preceding that last
4 line -- there is evidence that they had downloaded, printed, or
5 emailed the transcript?

6 THE WITNESS: I'm not sure what you're saying.

7 THE COURT: Your last sentence says: "I did not find
8 any evidence that the Jarrah transcripts had been downloaded,
9 printed, or emailed by anyone else." I read that to say that
10 the people in the line above, namely, Jim Kreindler, Steven
11 Pounian, all the way through to John Fawcett, that there was
12 evidence that they had either downloaded, printed, or emailed
13 the declaration.

14 THE WITNESS: I meant that anybody other than those
15 people did not download.

16 THE COURT: Anybody other than those people what?

17 THE WITNESS: Yeah, did not download, print it, or
18 email.

19 THE COURT: So you were able to see that those people
20 did, in fact, download, print, or email?

21 THE WITNESS: We don't keep track of downloading and
22 printing or emailing.

23 THE COURT: What does this sentence mean, "I did not
24 find any evidence that the Jarrah transcripts had been
25 downloaded, printed, or emailed by anyone else"? I don't know

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Hartney - Cross

1 what that means.

2 THE WITNESS: I guess what I'm trying to say there is
3 that I didn't really find any real solid evidence that anybody
4 other than those people downloaded, printed, or emailed.

5 THE COURT: The transcript? But you did have evidence
6 that those people did download, print, or --

7 THE WITNESS: I had evidence that they -- two of them
8 emailed.

9 THE COURT: Evidence that two of them had emailed it?

10 THE WITNESS: Yeah.

11 THE COURT: And those two people were?

12 THE WITNESS: Were Debra Pagan and John Fawcett.

13 THE COURT: Debra Pagan and John Fawcett.

14 So your system does allow you to see who downloaded,
15 printed, or emailed?

16 THE WITNESS: I can only see the tracking of email.
17 We don't track downloading, printing. But I guess I maybe
18 should have elaborated more and said that we don't track
19 downloading.

20 THE COURT: So there would never be any evidence that
21 anybody downloaded or printed the transcript?

22 THE WITNESS: No.

23 THE COURT: OK.

24 THE WITNESS: I mean, the downloading, that might
25 pertain to the downloading of it on the cloud server also.

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Hartney - Cross

1 THE COURT: Downloading it from the cloud?

2 THE WITNESS: Yes, that's being kept track.

3 THE COURT: Right. I think you go on to talk about
4 that in the next paragraph.

5 THE WITNESS: Yeah.

6 THE COURT: But this is the proprietary server.

7 THE WITNESS: Yeah, OK. Yes.

8 THE COURT: So with respect to the proprietary server,
9 you cannot tell if anybody downloaded or printed?

10 THE WITNESS: No, no, you cannot tell.

11 THE COURT: So when you listed that there's no
12 evidence that the Jarrah transcript had been downloaded,
13 printed, or emailed by anyone else, what you're saying is you
14 know two people emailed it because you can track the email?

15 THE WITNESS: Yeah.

16 THE COURT: But you can't see if anybody downloaded it
17 or printed it?

18 THE WITNESS: Yes.

19 THE COURT: OK. Thank you. Sorry.

20 MR. SHEN: Sure.

21 BY MR. SHEN:

22 Q. Mr. Hartney, you said that Ms. Benett didn't want to tell
23 the Court that anyone at the Kreindler firm had access to all
24 of the protected 9/11 material. What other attorneys told you
25 that they didn't want to tell that to the Court?

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Hartney - Cross

1 A. No other.

2 Q. Only Ms. Benett?

3 A. Correct.

4 Q. Is that right?

5 A. Yes.

6 Q. Did you discuss that issue with Mr. Maloney?

7 A. No.

8 Q. Did you discuss that issue with Mr. Pounian?

9 A. No.

10 Q. Did you ever discuss access issues at all with
11 Mr. Kreindler?

12 A. No.

13 Q. Can we look at paragraph 6 of your declaration in front of
14 you.

15 Paragraph 6 discusses the cloud-based storage system.

16 Do you see that?

17 A. I don't see it yet. It's not on the screen. Yes, now it
18 is.

19 Q. Do you see that?

20 A. Yes, I see that.

21 Q. Sir, the cloud-based system, is that called share file?

22 A. Citrix share file, C-i-t-r-i-x.

23 Q. And certain FBI and other protected information were saved
24 on that Citrix share file, is that right?

25 A. My understanding, only thing I saw saved on it was the

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Hartney - Cross

1 depositions that recall.

2 Q. Particular depositions or many depositions?

3 A. Many depositions.

4 Q. All right. Now, consultants, experts, and others could
5 access this cloud-based system if they were provided login
6 access. That's what you write, correct?

7 A. Correct.

8 Q. But Mr. Fawcett, he was provided access to the internal
9 proprietary server, correct?

10 A. Correct.

11 Q. The firm actually considered Mr. Fawcett to be staff,
12 correct?

13 A. I can't answer that question.

14 Q. From an IT perspective, did you treat Mr. Fawcett any
15 differently from any other employee at the firm?

16 A. You mean through access, login access?

17 Q. Sure.

18 A. Yes, we gave him login access and we gave him email access.

19 Q. The question was did you treat him any differently than any
20 other employee at the firm?

21 A. Did I treat him differently? I guess not, no.

22 Q. You were aware he had a phone at the firm?

23 A. I was aware he had a phone.

24 Q. Sorry?

25 A. You mean a telephone, a desk phone?

LB1H9115

Hartney - Cross

1 Q. A desk phone, yes, sir.

2 A. Yes.

3 Q. All right. And did he have his own email from the firm?

4 A. Yes.

5 Q. He had an office at the firm, correct?

6 A. Yes.

7 Q. Now, to view documents that were saved on this cloud-based
8 server, the user would actually have to download them, and so
9 you have a record of that, is that right?

10 A. Yes.

11 Q. That's the only location where documents were actually
12 stored on a server that keeps a record of who downloads them,
13 is that right?

14 A. Can you -- when you mean "download," you mean download from
15 outside the office or do you mean download --

16 Q. Just accesses the documents.

17 A. Access the documents, yes.

18 Q. That's the only system that tracks access to the documents?

19 (Discussion off the record)

20 A. Yes.

21 Q. You state in paragraph 6 that you reviewed the user history
22 of this cloud-based share file system on July 29, 2021. Do you
23 see that?

24 A. Yes.

25 Q. And that's the first time that you did that, correct?

LB1H9115

Hartney - Cross

1 A. First time I ever reviewed it, I believe so, yes.

2 Q. You were instructed to review it on July 29, correct?

3 A. Correct.

4 Q. Now, are you aware that Mr. Fawcett actually managed and
5 maintained confidential, protected materials on other
6 cloud-based systems?

7 A. No.

8 Q. Are you aware that he had a Dropbox account that he managed
9 that contained protected material?

10 A. I know he had a Dropbox account.

11 Q. Did you know that it contained protected material on it?

12 A. No.

13 Q. That's not something that you investigated?

14 A. I wasn't asked to investigate that.

15 Q. All right. No one at the Kreindler firm asked you to
16 investigate any other cloud-based systems that contained
17 protected information, correct?

18 A. Correct.

19 Q. All right. Now, let's show Exhibit 68, please. Now, this
20 is a screenshot of a Dropbox account. If we zoom in on the
21 right-hand side, it says that John Fawcett is the owner of the
22 account.

23 Now, you had no idea that Mr. Fawcett was saving
24 confidential and protected materials to this Dropbox account,
25 correct?

LB1H9115

Hartney - Cross

1 MS. KIRSCH: Objection. This is a screenshot without
2 a date on it, without any context.

3 MR. SHEN: There is a date on the document.

4 MS. KIRSCH: Where is the date?

5 MR. SHEN: It's in the bottom right-hand side,
6 October 15, 2021.

7 MS. KIRSCH: OK.

8 BY MR. SHEN:

9 Q. Sir, the question is did you have any idea that Mr. Fawcett
10 was saving protected material on other cloud-based servers such
11 as this Dropbox account?

12 A. No.

13 Q. Did you ever take any actions to limit his access after the
14 breach of the protective order?

15 A. Yes.

16 Q. -- to --

17 A. I'm sorry. Sorry.

18 Q. -- to other cloud-based systems that he had, such as this
19 Dropbox account?

20 A. Can you repeat the question.

21 Q. Yeah. Let me ask a cleaner question.

22 Sir, you had no idea that he maintained this Dropbox
23 account, right?

24 A. I know he had the Dropbox.

25 Q. You had no idea he had protected information on this

LB1H9115

Hartney - Cross

1 account, right?

2 A. Correct.

3 Q. Did you undertake actions to limit his access to the
4 Dropbox account?

5 A. After what time?

6 Q. After the breach.

7 A. Yes.

8 Q. When?

9 A. I don't recall the exact date, to tell the truth. I'm
10 sorry.

11 Q. Was it in October?

12 A. I believe so, yes.

13 MR. SHEN: All right. Let's show Exhibit 67, please.

14 Q. Exhibit 67 is an email from an attorney at my firm to
15 counsel for Kreindler & Kreindler identifying this particular
16 Dropbox account containing protected information. It's dated
17 October 15.

18 Do you recall that after October 15 is when you
19 actually stopped Mr. Fawcett's access to that material?

20 A. Can you repeat the question.

21 Q. The email is dated October 15. Do you see that?

22 A. Yes.

23 THE COURT: If you want to take a look over that
24 email, you can.

25 THE WITNESS: OK. OK.

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Hartney - Cross

1 Q. Sir, my question to you is, was it after October 15 that
2 you stopped Mr. Fawcett's access to that Dropbox account?

3 A. I don't recall.

4 Q. You don't know one way or another?

5 A. I cannot tell you the exact date.

6 Q. Sir, did you know that Mr. Fawcett maintained a cloud
7 platform called Tresorit that had MDL-protected information on
8 it?

9 A. No.

10 MS. KIRSCH: I'm going to object here. I really don't
11 know where these lines of questions are going, but to the
12 extent it goes to our work product, and -- this could be
13 something that we would have an issue with this being discussed
14 in any depth publicly. I don't know.

15 MR. SHEN: This goes to the reasonableness of the
16 investigation and where protected materials were actually
17 saved.

18 THE COURT: All right. Thus far I don't see any issue
19 with work product, but if we get close, please raise an
20 objection.

21 BY MR. SHEN:

22 Q. Now, sir, the question was did you know that Mr. Fawcett
23 was maintaining protected material on a cloud platform called
24 Tresorit?

25 A. No.

LB1H9115

Hartney - Cross

1 Q. Did you ever stop Mr. Fawcett's access to a cloud platform
2 called Tresorit?

3 A. No.

4 THE COURT: Can I ask a clarifying question. The
5 Dropbox account, was that a Kreindler & Kreindler account or
6 was that a Fawcett personal account?

7 THE WITNESS: I can't tell from the screenshot where
8 that was coming from, whether it was from his personal account.
9 We did maintain an account for him.

10 THE COURT: You maintained a Dropbox account for him?

11 THE WITNESS: Yes, but I don't know from that
12 screenshot whether he had his own Dropbox account.

13 THE COURT: Understood. Thank you.

14 THE WITNESS: I can't say either way. It's possible.

15 BY MR. SHEN:

16 Q. Sir, in the investigation that Mr. Maloney instructed you
17 to do pertaining to the breach, did you do any investigation of
18 Dropbox or Tresorit?

19 A. No.

20 MR. SHEN: I'm going to show an Exhibit 23, but before
21 I do that, I want to give Mr. Fawcett's counsel a chance to
22 comment on confidentiality.

23 THE COURT: Sorry, Mr. Shen, you said Exhibit 23?

24 MR. SHEN: Yes, your Honor.

25 (Counsel confer)

LB1H9115

Hartney - Cross

1 MR. SHEN: Could we put up Exhibit 23, please.

2 Q. This is a letter that counsel for Mr. Fawcett has written
3 to me. If we could show the second page, there is a discussion
4 of a Tresorit-encrypted storage platform. Do you see that?

5 A. Yes.

6 Q. Do you even know what that Tresorit platform is?

7 A. I've never used it.

8 Q. And you had no idea that Mr. Fawcett was using it?

9 A. No.

10 Q. Now, we discussed that confidential documents are also --
11 can be saved on the email server if they're attachments to
12 emails or they're discussed in the body of emails, correct?

13 A. Can you say that one more time. Repeat that.

14 Q. Sure. Confidential, protected documents, they could also
15 be attached to emails that are sent around. If they are, then
16 they're saved on the email server, is that right?

17 A. Yes.

18 Q. Now, part of your responsibilities is managing the
19 Kreindler email system, is that right?

20 A. Correct.

21 Q. Now, the Kreindler firm, in connection with the 9/11 cases,
22 has hired a number of investigators, former FBI agents.
23 They're all disclosed on the public record. Do you give
24 Kreindler email accounts to those investigators?

25 A. No.

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Hartney - Cross

1 Q. All right. Now, you have administrative access to the
2 email server, so you can search that server, is that right?

3 A. Correct.

4 Q. And you can monitor the email activity at the firm, right?

5 A. What do you mean by monitoring?

6 Q. If you wanted to search for particular content on the email
7 server, you could do that, right?

8 A. Yeah, I can search for content. I don't see content
9 moving, watching it where it's going to and from, but I can do
10 a search from where it's going to and from.

11 Q. Can we look at your declaration, 56F, again, paragraph 8.

12 Now, sir, in paragraph 8 of your declaration, you
13 described the search of the Kreindler email system that you
14 conducted, is that right?

15 A. Correct.

16 Q. You say that you searched for incoming and outgoing
17 messages to three -- or four email addresses relating to Mike
18 Isikoff from June 1, 2021, to August 1, 2021, is that right?

19 A. Yes.

20 Q. Did you search for any deleted messages?

21 A. It would search -- my understanding was Office 365 that it
22 saves 30 days and stays under the purged directory.

23 Q. So if a user manually deletes an email, it goes into a
24 purge file and Office 365 will search that purge file and can
25 locate that deleted email?

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Hartney - Cross

1 A. Yes, I believe so.

2 Q. What if it's gone past 30 days?

3 A. Then I don't know.

4 Q. Is that email gone forever?

5 A. I believe so, yes.

6 Q. All right. So you say that you conducted this search. The
7 search parameters were June 1 to August 1, 2021. That means
8 that you necessarily conducted that search after August 1,
9 right?

10 A. Yes.

11 Q. All right. So if the user had deleted a document in June
12 and manually deleted that document, your search would not have
13 located that document, is that right?

14 A. I should say I don't really know.

15 Q. Did you search for emails that were saved on the hard
16 drives of any of the attorneys or staff?

17 A. No.

18 Q. Did you conduct a search of any home computers, laptops,
19 devices?

20 A. No.

21 Q. Did you search any text messages?

22 A. No.

23 Q. Phone logs?

24 A. Phone logs for what?

25 Q. Did you search any phone records?

LB1H9115

Hartney - Cross

1 A. Phone records, yes.

2 Q. You did search phone records?

3 A. Phone records for certain phone calls, I -- yes.

4 Q. Let me ask a clean question.

5 A. Yes, not exactly sure.

6 Q. Did you look through Kreindler & Kreindler's phone records?

7 A. I didn't personally look through Kreindler & Kreindler.

8 Q. Did you pull them?

9 A. I had them. I had the counsel for our -- our phone vendor,
10 our phone provider.

11 Q. This was after Ms. Kirsch had been retained?

12 A. Correct, yes, yes.

13 Q. Correct.

14 But in connection with what you're describing as the
15 investigation in your declaration, did you pull any phone
16 records?

17 A. No, no, no.

18 Q. Now, if the user does not delete an email, does that email
19 get purged automatically from the Kreindler system?

20 A. My understanding, we used a default Office 365, which is
21 30-day window.

22 Q. 30-day default?

23 A. Yes.

24 Q. So if an email is in an inbox and it's now been 31 days,
25 that email is deleted off the server?

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Hartney - Cross

1 A. Oh, no, no. I misunderstood your question.

2 Q. OK.

3 A. Nobody -- unless it's deleted by the user.

4 Q. But is there an automatic purging of emails if the user
5 does not delete it?

6 A. No.

7 Q. All right. So if someone had an email from five years ago
8 that they didn't delete, it would still be in the inbox?

9 A. Correct.

10 Q. Now, paragraph 9, you describe another email search, is
11 that right?

12 A. Correct.

13 Q. You say that you searched the email server for outgoing,
14 incoming, saved, and deleted messages containing the names
15 Jarrah or Isikoff or the name that the court reporter had given
16 to the transcript. You see that?

17 A. Yes.

18 Q. And, again, the same search period -- well, strike that.

19 Did you do that after August 1, or did you do it
20 before?

21 A. Well, that's a good question. It had to be after August 1,
22 I believe. I can't -- yeah, actually, yes, I can -- it was
23 done -- I've done multiple searches to make sure that it was a
24 thorough investigation of our email system, and so I performed
25 the searches two or three, maybe even four, five times. I had

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Hartney - Cross

1 redone that search either if it was before or after.

2 Q. You did that search several times?

3 A. Yes.

4 Q. The same search, searching for Jarrah or searching for
5 Isikoff or the name in the transcript?

6 A. Yes.

7 Q. You did that several times, and you say that the only
8 emails that resulted are attached at Exhibit 1 of your
9 declaration. You see that?

10 A. Yeah.

11 Q. That's in paragraph 10.

12 A. I see that.

13 Q. And you attached several emails in Exhibit 1. You see
14 that?

15 A. I'm supposed to be looking at the exhibits, the emails
16 or --

17 Q. Yes. Can we look at Exhibit 1, and we'll look in
18 particular at page 6. This is one of the emails that you cite
19 in your declaration. You with me?

20 A. Yes.

21 Q. And this particular email is one from Jim Kreindler to Mark
22 Seman of Yahoo! News, and it's discussing Mr. Kreindler's
23 appearance on the *Conspiracyland* podcast. Do you see that?

24 A. Yes.

25 Q. And you see that Mr. Kreindler is actually sending the

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Hartney - Cross

1 email from his personal device, right?

2 A. Yes, I believe so.

3 Q. It says "sent from my iPhone." You see that? You see
4 that? You have to say yes or no.

5 A. Yes.

6 Q. Sir, you see that of all of the emails that you've attached
7 in your exhibits, I will represent to you that this is the one
8 earliest in time. This is the earliest email, June 28 of 2021.

9 Now, given the fact that Mr. Kreindler is being sent
10 details on when to appear on the *Conspiracyland* podcast, it
11 certainly stands to reason that he had earlier communications
12 with Mr. Isikoff, right?

13 MS. KIRSCH: I'm going to object to that. I'm not
14 really sure why this witness should be opining on what the
15 pattern of communications should or should not have been.

16 THE COURT: Sustained.

17 Q. Sir, did you search for any emails prior to June 28, after
18 you saw this email?

19 A. You're asking is this search --

20 Q. Let me ask --

21 A. -- June 1?

22 Q. When you saw this email June 28 coming from
23 Mr. Kreindler's iPhone setting up an appointment to appear on
24 the podcast, did anyone ask you to determine whether there were
25 earlier communications?

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Hartney - Cross

1 A. No.

2 Q. Sir, you never asked for Mr. Kreindler's personal devices
3 or his personal emails, is that right?

4 A. What do you mean by "personal email"?

5 Q. Like if he has a Yahoo! account or Gmail account, you never
6 asked for access to those?

7 A. No.

8 Q. And even after Ms. Kirsch got involved in this case, do you
9 know if Kreindler ever searched the personal emails of any of
10 its attorneys?

11 A. Do I know? No, I don't know.

12 Q. If you could look at page 13 of your declaration -- of the
13 exhibits to your declaration. Page 13 is an email from
14 Mr. Fawcett to Mr. Isikoff dated July 12, 2021, is that right?

15 A. Yes.

16 Q. And this email attaches a privilege log, but there's no
17 actual content in the body of the email, correct?

18 A. I believe that's true. I'm not sure. I can't remember.

19 THE COURT: Sir, can you put the microphone just
20 closer to you so the court reporter can hear you.

21 THE WITNESS: Oh, I'm sorry.

22 Q. This email certainly suggests that there were earlier
23 communications with Mr. Fawcett. Did anyone ask you to search
24 for those communications?

25 MS. KIRSCH: I'm sorry. I'm going to object to what

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Hartney - Cross

1 this document does or doesn't imply.

2 THE COURT: OK. He can answer the question, though,
3 as to whether or not anyone asked him to follow up. I'll
4 accept your objection as to its implications, but Mr. Shen can
5 ask the question.

6 A. No.

7 Q. Now, sir, because the firm has the ability to monitor its
8 firm emails, it's certainly the case that if someone were to
9 leak confidential information, it wouldn't make any sense to
10 leak it over firm email, correct?

11 A. It's my opinion you're asking?

12 Q. Yes.

13 A. My opinion -- can you repeat the question.

14 Q. Sure. The firm has the ability to monitor firm email. You
15 testified to that, correct?

16 A. Correct.

17 Q. Now, because it has that ability, if someone were to leak
18 confidential information, it would make no sense to do that
19 over firm email, correct?

20 MS. KIRSCH: I'm going to object to that. Who knows
21 what monitoring there is or isn't? It's a ridiculous question
22 for this witness.

23 THE COURT: Sustained. You can ask a different
24 question, please.

25 Q. Now, paragraph 10 of your declaration discusses -- it

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Hartney - Cross

1 states that all of the results of your searches are attached
2 to -- in Exhibit 1. Do you see that?

3 A. Yes.

4 Q. The exact language is "the only" emails returned are in
5 Exhibit 1. Do you see that?

6 A. Yes.

7 Q. If you could, there's a binder to your right. It might be
8 easier to flip through that.

9 THE COURT: It's going to be the larger one, sir.
10 I'll take this one.

11 THE WITNESS: Not that one?

12 THE COURT: You're going to want that one.

13 A. OK. What number?

14 Q. Now, sir, Exhibit 1, I'm going to represent to you, doesn't
15 contain any of the emails from the court reporter with the
16 Jarrah transcript, and you can confirm that.

17 A. Where would I find it?

18 Q. 56F, please.

19 A. Can you -- which document are you talking about? Can you
20 show me the document?

21 Q. Sure. It's 56F. It's Exhibit 1. It's on page 5.

22 A. OK.

23 Q. Behind page 5 are what you describe in your deposition as
24 the only emails returned as a result of the searches you
25 conducted, and specifically, the searches you conducted are

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Hartney - Cross

described as a search of emails for Jarrah, Isikoff, or the name of the transcript.

A. Yes.

Q. All right. So you don't see any email from the court reporter providing the transcript, correct?

A. Can you repeat that.

Q. You don't see an email from the court reporter providing the transcript in Exhibit 1?

A. I'm not sure. I'm sorry. I'm not following you.

Q. All right. I'm going to make a representation to you.

Exhibit 1 does not contain any transmission from the court reporter to anyone at the Kreindler firm containing the Jarrah transcript.

A. The court reporter?

Q. The court reporter who actually took down the transcript of the deposition and then sent the transcript to the Kreindler firm by email.

A. So you're saying that there's -- I'm not following you. I'm sorry. Can you just --

Q. Sure. All right. Let's take a step back.

A. OK.

Q. Your declaration says that all of the emails that you located in your search are contained in Exhibit 1, right?

A. That's only one email.

Q. Paragraph 10 says: "The only emails returned as a result

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Hartney - Cross

1 of the searches I conducted are in Exhibit 1." That's what it
2 says, right?

3 A. I don't think it's showing all the emails.

4 Q. So Exhibit 1 does not contain all the emails that you
5 located?

6 A. No, there's more emails than that.

7 Q. Can you speak into the microphone.

8 A. Oh, I'm sorry. Yes, there's more emails.

9 Q. There's more emails than are in Exhibit 1?

10 A. Yes.

11 Q. What happened to those emails?

12 A. I thought they were all part of the exhibits.

13 Q. All right. But what we know is that the actual statement
14 in paragraph 10 of your declaration is false?

15 A. I don't understand why all the other emails wouldn't be in
16 there.

17 Q. OK.

18 A. I don't know.

19 Q. Sir --

20 A. I don't think it's our --

21 Q. Did you actually do a search through all of the emails for
22 the name Jarrah or Isikoff?

23 A. I don't recall the exact search. I think it would be both
24 one or the other, yes, not for both.

25 Q. One or the other?

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Hartney - Cross

1 A. Yes.

2 Q. OK. The term "Jarrah," you would agree, would come up with
3 dozens and dozens and dozens of hits, correct?

4 A. Yes, I believe so, yes.

5 Q. How many hits came up when you did that search?

6 A. I don't recall.

7 Q. Did you provide those documents to Mr. Maloney?

8 A. The -- no, I reviewed them myself.

9 Q. You reviewed them yourself?

10 A. Yeah.

11 Q. But what we know from your declaration is that when you
12 state that all of the results of your searches are listed in
13 Exhibit 1, that's not a correct statement?

14 A. Well, for some reason, I don't -- well, the only emails
15 returned -- there is an email. So this is only one email. Are
16 there two emails? There was a couple of emails between --

17 THE COURT: Why don't you spend two minutes and just
18 flip through.

19 THE WITNESS: I'm sorry.

20 THE COURT: That's OK. Because there are a handful of
21 emails in that attachment. Why don't you spend just a minute
22 to flip through it so you can see.

23 A. Oh, it's this part. I'm sorry, because I'm going back and
24 forth to the screen.

25 So all this is part of Exhibit 1. In between here

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Hartney - Cross

1 is -- I'm not understanding it. So everything in between --
2 I'm sorry, all the emails are. I was thinking -- confused
3 because it came up to this document. Why is this --

4 Q. Take a minute to review the emails that are in Exhibit 1,
5 sir.

6 A. Okay. I thought Exhibit 1 ended here because it had this.

7 Yes, I didn't --

8 Q. OK.

9 A. -- I thought the exhibit list ended when it hit this letter
10 here.

11 Q. All right. Sir, I've counted a total of ten emails. I can
12 make that representation to you, sir.

13 A. I wish there were more. Yes, these are all the emails.

14 Q. All right. Did you actually do a search for all emails for
15 the term "Jarrah"?

16 A. Say that again. Sorry.

17 Q. Did you actually do a search of the email server for the
18 term "Jarrah"?

19 A. No.

20 Q. What did you do an email search of?

21 A. Sorry, emails. I'm sorry. When you said "search," I
22 apologize, I thought you meant network search. Email server.

23 Q. Did you do a search for just the term "Jarrah"?

24 A. Yes.

25 Q. And all of the searches that came up are in these ten

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Hartney - Cross

1 emails attached as Exhibit 1?

2 A. Yes.

3 Q. Did you --

4 A. I'm sorry. I'm sorry. Say that again. All the emails
5 that had Jarrah in it?

6 Q. Yes.

7 A. Are in these emails?

8 Q. Yes.

9 A. There would be more emails because it was discussed, yes.

10 Q. How many more emails?

11 A. I don't know.

12 Q. Did you review those emails?

13 A. Yes.

14 Q. Was it hundreds of emails?

15 A. I don't remember.

16 Q. All right. But what we do know is that the statement in
17 your declaration saying all of the emails that hit upon your
18 searches are contained in Exhibit 1, that's not a true
19 statement?

20 MS. KIRSCH: I'm sorry.

21 A. That's --

22 MS. KIRSCH: Could I have the question read back? I
23 think I have an objection. I don't think that states his
24 testimony, but I could be mistaken.

25 THE COURT: Can you read the question.

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Hartney - Cross

1 (Record read)

2 MS. KIRSCH: That's fine.

3 THE COURT: OK. You can answer it.

4 THE WITNESS: Can you repeat that again. I'm reading
5 what I wrote here.

6 (Record read)

7 A. No, all the searches -- no, the only -- they talk about --
8 what I'm talking about is emails with the portion of the Jarrah
9 deposition transcript in it.

10 Q. That's not what your declaration says, sir. Paragraph 9 of
11 your declaration says --

12 A. I'm sorry. I'm looking at 10. I also searched -- I have
13 10 up on my --

14 Q. Can we show paragraph 9.

15 Paragraph 9 says that you searched emails for Jarrah
16 or Isikoff or the name of the transcript.

17 A. Yes.

18 Q. Did you do that search?

19 A. Yes, I did that search.

20 Q. All right. Were there hundreds of emails that came up with
21 just the term "Jarrah" in it?

22 A. I can't recall.

23 Q. There were more than ten, right?

24 A. Yes.

25 Q. And your Exhibit 1 attaches only ten emails?

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Hartney - Cross

1 A. Because on my -- the only emails return results conducted
2 are attached, because I was referring to that didn't have the
3 Jarrah deposition.

4 Q. Say that again, sir.

5 A. I was referring to that didn't discuss -- that didn't have
6 any Jarrah deposition transcripts attached to them, so --

7 Q. You're only referring to the emails that didn't have Jarrah
8 deposition transcripts attached to them?

9 A. Yes.

10 MR. SHEN: All right. Let's show Exhibit 31, please.

11 Q. Exhibit 31 is an email that my colleague sent to a number
12 of attorneys at the Kreindler firm. It has the term "Jarrah"
13 in it. It's not attached as Exhibit 1 to your declaration.

14 A. No, but I was referring to anything that has to do with the
15 Jarrah transcript. Any text of Jarrah transcript, that's what
16 I was referring to.

17 Q. Just so the record is clear, what is in Exhibit 1?

18 A. It's the emails. It is just the emails that are between
19 Isikoff and Jim Kreindler.

20 Q. All right. Sir, we're going to move on from this point.

21 These paragraphs, were they drafted by Ms. Benett?

22 A. Correct.

23 Q. Did she pull together the documents for this declaration?

24 A. I believe so, yes.

25 Q. All right. Are you aware, sir, that on July 21 my firm

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Hartney - Cross

1 informed the Kreindler firm that we were aware of the leak and
2 that we were going to move the Court for certain discovery
3 pertaining to the leak?

4 A. Say that again. Can you?

5 Q. Were you aware, sir, that on July 21 my firm reached out to
6 the Kreindler firm and told the Kreindler firm that we were
7 aware of the leak of the transcript, and we were going to move
8 the Court for certain relief pertaining to the leak?

9 A. No, I wasn't.

10 Q. Are you aware that the Kreindler firm wrote to the Court on
11 July 27 and took the position that there should not be
12 discovery?

13 A. No.

14 Q. On July 27 -- I'm not going to show you on the screen, but
15 I will read it to you. It says that plaintiffs advised
16 Saudi Arabia that each of the lead PEC firms had already
17 conducted internal investigations into the handling of the
18 Jarrah transcripts and communications with Mr. Isikoff. That
19 was on July 27.

20 For the Court's reference, that's Exhibit 43.

21 When those representations were made by the Kreindler
22 firm, you had not, in fact, done any search of the cloud-based
23 server, correct? That was done on July 29, as we discussed?

24 A. I believe so, yes.

25 Q. On July 27, you had not done any review of the Case Media

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Hartney - Cross

1 proprietary internal server, correct?

2 MS. KIRSCH: I'm sorry. What's the foundation for
3 that question?

4 MR. SHEN: I'm asking, as of that date, whether
5 Mr. Hartney had done the search.

6 MS. KIRSCH: Objection. I don't know what the
7 foundation is for that date.

8 THE WITNESS: Yeah, I don't --

9 THE COURT: The date is the date of a letter that was
10 filed with the court. I believe the -- Mr. Shen is asking
11 about a letter that was filed with the court by the Plaintiffs'
12 Executive Committee on July 27, and I think Mr. Shen is asking
13 about what investigation had been conducted at that point in
14 time.

15 MS. KIRSCH: I understood Mr. Shen to say, Isn't it
16 true that your investigation did not happen by July 27? which
17 struck me as an inappropriate. We have no foundation for when
18 Mr. Hartney's searches took place. That was the basis of my
19 objection.

20 BY MR. SHEN:

21 Q. Let me ask the question. July 27, the Kreindler firm
22 writes to the court saying that the investigation is complete.
23 As of that date, had you done an investigation of the Case
24 Media internal proprietary server?

25 A. Only to the fact that we found that document in Case Media,

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1 but no.

2 Q. OK. Only the fact that it was stored on that media server,
3 but no other investigation, correct?

4 A. Yeah.

5 Q. And as of that date, you knew that anyone at the Kreindler
6 firm had access to everything on that server, correct?

7 A. Correct.

8 Q. Now, as of July 27, you knew that there were email
9 communications between Mr. Kreindler and Mr. Isikoff, as well
10 as email communications between Mr. Fawcett and Mr. Isikoff, is
11 that right? Those are attached as Exhibit 1 to your
12 declaration.

13 A. Yes.

14 Q. And you knew that some of those email communications came
15 from Mr. Kreindler's personal device, correct? We saw --

16 A. Yes.

17 Q. -- that it was sent from his iPhone, and no one asked you
18 to search for his iPhone, right?

19 A. Correct.

20 Q. Or his personal email?

21 A. That came up on the Kreindler email.

22 Q. No one asked you to reach out to Jim Kreindler and provide
23 his personal email, correct?

24 A. Correct.

25 Q. So it's certainly the case by July 27 that you could not

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Hartney - Cross

1 have concluded that no one at the Kreindler firm was the source
2 of the leak, right?

3 A. Yeah, I believe so.

4 Q. Let's look at Exhibit 49. This is the August 30 order from
5 the court. On page 2 of that order, it says that the Kreindler
6 firm is required to provide a declaration from the head of the
7 law firm's information technology group that should demonstrate
8 that a forensic analysis was done to identify who accessed the
9 deposition transcripts and determine the dates of that access.

10 You see that?

11 A. Yeah.

12 Q. And you knew it was impossible for you to conduct any
13 forensic analysis of who had actually accessed the Jarrah
14 transcripts on the Case Media server, correct?

15 A. I was never asked to do one.

16 Q. You were never asked to do one?

17 A. I don't recall, no. I mean, in the sense that we don't
18 keep any tracking of that information.

19 Q. All right. So no one asked you to do a forensic analysis,
20 correct?

21 A. Correct.

22 Q. Now, are you aware, sir, that on September 27 the Kreindler
23 firm informed the court that John Fawcett had leaked the Jarrah
24 transcript to Michael Isikoff?

25 A. Can you repeat that.

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Hartney - Cross

1 Q. Are you aware that the Kreindler firm on September 27
2 informed the court that John Fawcett had leaked the Jarrah
3 transcript to Michael Isikoff?

4 A. One more time. What date?

5 Q. September 27.

6 A. Correct, yes.

7 Q. And after that disclosure, were you asked to conduct any
8 forensic investigation of anybody's computer to determine
9 whether they knew of that leak or directed it?

10 A. Was -- no.

11 Q. After that disclosure and before Ms. Kirsch got involved in
12 October, were you asked to search personal devices, text
13 messages, personal emails?

14 A. No.

15 Q. Were you asked to search phone records?

16 A. After the --

17 Q. After the leak but before Ms. Kirsch got involved.

18 A. No.

19 Q. All right. So as you sit here today, you have no ability
20 to conclude that no one at the Kreindler firm had directed the
21 leak or had knowledge of it, correct?

22 A. I was just directed to do what the --

23 Q. And you just did what the attorneys told you?

24 A. Well, and we all discussed a -- a -- you know, a way of,
25 you know, doing searches on emails to see if it went out from

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Hartney - Cross

1 the Kreindler.

2 Q. You're referring to searches of the Kreindler email server?

3 A. Yes.

4 Q. And that's it, that's the only search you did, right?

5 A. Yes.

6 THE COURT: I don't want to interrupt you, Mr. Shen,
7 but I think, for the court reporter's sake, we're going to take
8 a break at some point, but you tell me if you think you're
9 getting close or if you want to take a break. I don't know how
10 much longer you've got.

11 MR. SHEN: Five to ten minutes, and I'll be done.

12 THE COURT: OK. So let's finish this witness for you,
13 and then we'll take a break and then Ms. Kirsch will go.

14 BY MR. SHEN:

15 Q. If we could look at Mr. Fawcett's declaration, Exhibit 59,
16 from September 30 and paragraph 3. Mr. Fawcett says -- first
17 of all, have you seen this declaration before?

18 A. No.

19 Q. No. So this is your first time looking at it?

20 A. Correct.

21 Q. Now, Mr. Fawcett says that "I privately communicated with
22 Michael Isikoff several times between June 1 and August 1 of
23 this year."

24 After September 27, did anyone ask you to look at the
25 firm's phone records for Mr. Fawcett's communications with

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Hartney - Cross

1 Mr. Isikoff or with anyone else?

2 A. Yes.

3 Q. Was that after Ms. Kirsch got involved?

4 A. Correct.

5 Q. But not before that, correct?

6 A. Correct.

7 Q. Now, are you currently in the process of installing an
8 internal proprietary server that actually restricts access to
9 who can access the 9/11 materials?

10 A. Yes, that's in place.

11 Q. It's already in place?

12 A. Yes.

13 Q. And you did that after September 28, correct?

14 A. I can't recall the date I did it.

15 Q. But it was after the disclosure of the leak?

16 A. Yes.

17 Q. And are you currently installing or have you installed a
18 system that tracks who actually accessed proprietary material?

19 A. Yes.

20 Q. All right. Are you aware that that type of software is
21 routinely available and used by law firms to keep protected
22 information actually protected?

23 A. Yes.

24 Q. Now, paragraph 7 of Mr. Fawcett's declaration says that he
25 used a ProtonMail account to send the transcript to

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Hartney - Cross

1 Mr. Isikoff. Do you see that?

2 A. Yeah.

3 Q. Anyone ever ask you to get Mr. Fawcett's ProtonMail
4 account?

5 A. No.

6 Q. And you never did any investigation of that ProtonMail
7 account, correct?

8 A. Correct.

9 Q. You never reached out to ProtonMail to determine whether
10 any of the messages Mr. Fawcett had sent to Mr. Isikoff were
11 still available?

12 A. Correct.

13 Q. Did you ever, after the disclosure that Mr. Fawcett was the
14 source of the leak, seek the return of his home computer to the
15 firm, his personal computer?

16 A. No.

17 Q. No one asked you to do that?

18 A. No.

19 Q. Do you have any idea what protected and confidential
20 material is on that computer?

21 MS. KIRSCH: I'm going to object here. There's
22 implications in these questions that are inappropriate.
23 Mr. Fawcett was an outside consultant. He had his own personal
24 laptop. This line of questioning has no foundation and is not
25 relevant, and it's misleading, as Mr. Shen well knows.

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Hartney - Cross

1 MR. SHEN: I'm asking the witness whether he
2 personally engaged in certain conduct, and the question here is
3 whether he sought the return of devices that held protected and
4 confidential material.

5 MS. KIRSCH: And I object to the use of the word
6 "return" because if it's his own personal computer, there's
7 nothing to return. It's a misleading question, and Mr. Shen
8 knows it.

9 THE COURT: The objection is overruled. You can
10 answer the question.

11 THE WITNESS: Say it again.

12 THE COURT: You can answer the question.

13 A. OK. Can you repeat the question?

14 Q. Yeah. Did you ever ask or did anyone ever ask you to get
15 Mr. Fawcett's laptop and inspect it?

16 A. No.

17 Q. Did anyone ever ask you to get Mr. Fawcett's cell phones
18 and inspect it?

19 A. No.

20 MR. SHEN: No further questions. Thank you very much.

21 THE COURT: OK. We'll take a very quick recess, and
22 we'll be back in five minutes.

23 (Recess)

24

25

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Hartney - Redirect

1 THE COURT: Ms. Kirsch, you may proceed.

2 REDIRECT EXAMINATION

3 BY MS. KIRSCH:

4 Q. Good afternoon, Mr. Hartney.

5 A. Good afternoon.

6 Q. Mr. Hartney, we just spent a fair amount of time talking
7 about the searches that you performed and what you were
8 directed to perform over the summer.

9 So there is a book that's not that big yellow one.
10 It's a slightly smaller one that has tabs in it. We are going
11 to look at some of the documents in that book.

12 A. Sure.

13 Q. So let me turn your attention, to begin with, right to
14 Exhibit 2, tab 2. If you look down at the bottom, which is the
15 first e-mail in this thread, it seems to be Mr. Maloney sending
16 you a note on July 21st saying "any questions?" Do you see
17 that?

18 A. Yes.

19 Q. And then, if we go up to the next e-mail, you are reporting
20 on what it is you have done on the e-mails called "Jarrah
21 search." Do you see that?

22 A. Correct.

23 Q. Now, can you tell me what your search, looking at this
24 e-mail, what did you do and what turned up as a result of this
25 search?

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Hartney - Redirect

1 A. It was a pretty broad search in the beginning. So it
2 turned out a good number of hits, like I said, but I don't know
3 exactly how many hits.

4 Q. I am going to ask you if you could please get a little
5 closer to the microphone. That's just me personally. I don't
6 hear so well.

7 I see the last line you write, "I did not see any
8 e-mails going out of anyone's e-mail box with that particular
9 transcript."

10 Do you remember why you wrote that line or what you
11 meant by that?

12 A. I meant that I didn't find the Jarrah transcript being
13 e-mailed out by anybody at Kreindler.

14 Q. Was that the first thing you were looking for as of July
15 21st?

16 A. Yes.

17 Q. Then the next two e-mails suggests that you and Mr. Maloney
18 are looking to speak by phone. Do you recall that?

19 A. The conversation?

20 Q. Yes.

21 A. Yes.

22 Q. Do you remember what you discussed on that phone call?

23 A. It was to narrow the search down with particular search
24 terms and e-mail addresses.

25 Q. Then, if you turn to Exhibit 4, this document appears to be

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Hartney - Redirect

1 a text message exchanged on July 22nd between you and Mr.
2 Maloney. Do you see that?

3 A. Yes.

4 Q. And Mr. Maloney appears to say to you, "Please finish your
5 second search on Isikoff ASAP and let me know tomorrow before
6 noon if possible." Do you see that?

7 A. Yes.

8 Q. Do you remember what that second search was on July 22nd
9 that you were asked to perform?

10 A. The exact search, no. But it was for the e-mail -- adding
11 more e-mail addresses that Isikoff used and using the name of
12 the deposition. It was a developing search criteria that we
13 were gathering each time we would find it.

14 Q. So, prior to July 22nd, you had done a first immediate
15 search that turned up some results, is that right?

16 A. Yes.

17 Q. And then as more search terms became available, or more
18 targeted search terms, you went back at Mr. Maloney's direction
19 to do a second search, is that my understanding?

20 A. Yes.

21 Q. So, if you look then at tab 5, can you read me -- so this
22 appears to be another text on July 22nd. Would you read that
23 text message that you sent to Mr. Maloney here?

24 A. "Performed search on Isikoff name and e-mail address and
25 found no one sent him the transcript. There was e-mail

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Hartney - Redirect

1 communication with Jim discussing lifting of the gag order and
2 Isikoff writing an article."

3 Q. So, can you just tell us, reading that, what exactly you
4 had been asked to do and what that turned up?

5 A. That was -- we performed the search on Isikoff's name and
6 additional e-mail addresses.

7 Q. And specifically what were you looking for with those
8 searches?

9 A. We were looking for whether the transcript was sent out by
10 anybody in Kreindler.

11 Q. So, if you look now at tab 8, this is something that you,
12 Mr. Hartney, are forwarding to Mr. Maloney on July 22nd. Is
13 this one of the e-mails that you found in your search?

14 A. Yes.

15 Q. And you were sending it to Mr. Maloney for his review?

16 A. Yes.

17 Q. And if you look at tab 9, Mr. Hartney, is this also an
18 e-mail that you had found by July 22nd responsive to your
19 search that you're sending to Mr. Maloney?

20 A. Yes.

21 Q. What does Mr. Maloney respond to you, up at the top?

22 A. "Thank you. Is this all there is?"

23 Q. Do you remember if that was all there is?

24 A. I can't recall. I think there were some other e-mails.

25 Q. OK.

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Hartney - Redirect

1 A. I can't recall. I'm sorry.

2 Q. If we turn to Exhibit 14, would you take a look at this
3 document Exhibit 14, and can you just tell me what it is,
4 please?

5 A. This is the users that have access to the deposition files
6 that were shared on the shared file system.

7 Q. Can you walk me through this chart and tell me what it
8 reflects? There's check boxes and names. Can you explain it
9 to the Court, please?

10 A. It's hard to see, but it looks like the first one is
11 view/download. So any check mark would be, you would be able
12 to view or download the transcript.

13 The other one is download alerts, that you would
14 receive an alert if anybody had downloaded any documents from
15 the system.

16 Q. Is it fair to say that these boxes reflect different
17 permissions or different actions?

18 A. Correct.

19 THE COURT: I'm sorry. This was on the Citrix system?

20 THE WITNESS: Yes.

21 THE COURT: Which is the same or different from the
22 cloud system?

23 THE WITNESS: That is the cloud system.

24 THE COURT: That is the cloud system.

25 Q. Do you remember why you were asked to forward this

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Hartney - Redirect

1 screenshot or this document to Mr. Maloney?

2 A. I think he initially wanted to -- he wanted to know who had
3 access to these files.

4 Q. So you were performing one set of searches on the shared
5 file and another set of searches through the servers, do I
6 understand that?

7 A. You mean the e-mail server?

8 Q. Correct.

9 A. We did one set of searches on the e-mail server, and we
10 reviewed the documents on the shared server, cloud server.

11 Q. So then let's turn to tab 20, please.

12 If you look at the second e-mail here, this is dated
13 July 29 from you to Mr. Maloney. Do you see that?

14 A. Yes.

15 Q. Can you tell me what this e-mail represents?

16 A. This represents searches that were performed on these
17 users' mailboxes, and if anybody had e-mailed the Jarrah
18 deposition transcript outside of the office and inside.

19 Q. I'm sorry?

20 A. And internally, too.

21 Q. So does this reflect the records of where the Jarrah
22 transcript went by e-mail?

23 A. Yes.

24 Q. Did you discuss this summary document with Mr. Maloney at
25 all or did you just forward it to him for him to do whatever

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Hartney - Redirect

1 work he needed to do with it?

2 A. I forwarded it to him and he did the work.

3 Q. Was that the case with most of the searches, you performed
4 the searches, provided the information to Mr. Maloney, and he
5 took it from there?

6 A. Correct.

7 Q. Let's look at tab 34, if you would.

8 THE COURT: Can I ask a clarifying question on this
9 document?

10 MS. KIRSCH: Yes.

11 THE COURT: I want to make sure that I understand.

12 On this document, if you can go back at what we were
13 looking at.

14 THE WITNESS: Which one is that?

15 THE COURT: 20. Where we just were.

16 THE WITNESS: I'm there.

17 THE COURT: Sometime before you sent this July 29th
18 e-mail, you performed searches on the e-mail boxes to see if
19 anyone e-mailed the deposition transcript, and this list are
20 your results?

21 THE WITNESS: Right.

22 THE COURT: It indicates that Debra Pagan e-mailed it
23 to John Fawcett, is that correct?

24 THE WITNESS: Correct.

25 THE COURT: We also know that John Fawcett e-mailed it

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Hartney - Redirect

1 to somebody, but we don't know who that is, is that correct?

2 THE WITNESS: Correct.

3 THE COURT: Then, are these e-mails part of Exhibit 1
4 of your declaration?

5 THE WITNESS: These e-mails, I don't think they were
6 included.

7 THE COURT: Thank you. Sorry.

8 BY MS. KIRSCH:

9 Q. So, Mr. Hartney, let's turn to tab 34.

10 If you go down to the bottom there, there is an e-mail
11 on August 30th from Mr. Maloney to you that says, "Here is my
12 first draft, please review for accuracy."

13 Do you know what he is referring to there, Mr.
14 Hartney?

15 A. My declaration.

16 Q. Then, if you go up, the next day you write back to Mr.
17 Maloney, presumably after you have reviewed the declaration,
18 and you say, "I would like to redo the searches on the
19 journalist e-mail addresses. I don't feel confident I searched
20 both e-mail addresses. Can you send me the two e-mails
21 addresses?"

22 Do you see that?

23 A. Yes.

24 Q. Do you recall sitting here today why you weren't feeling
25 confident?

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Hartney - Redirect

1 A. Well, the court had ordered the declarations and
2 specifically the search of the Isikoff e-mails, and any other
3 e-mails that he may be associated with. Then Duke sent me the
4 declaration and I didn't want to sign it until I was confident
5 enough. So I redid the searches and re-reviewed the searches
6 just to be confident enough that what I was saying was truthful
7 in the declaration.

8 Q. As you're getting ready to prepare this declaration on
9 August 31st, you are redoing the searches for the journalist's
10 e-mail addresses, Mr. Isikoff?

11 A. Correct.

12 Q. But you didn't at this point redo the full panoply of
13 searches for the name Jarrah, correct?

14 A. I did everything.

15 Q. You did everything?

16 A. Yeah. I did all the searches again and re-reviewed just to
17 make sure that I wasn't missing anything.

18 Q. OK. And then when you're double-checking and doing
19 everything, you also looked to confirm with Mr. Maloney what
20 was the date range. Do you see that?

21 A. Yes.

22 Q. And then Mr. Maloney responds to you that the court
23 actually asked us to cover June 1 to August 1.

24 Do you know what you did after you received Mr.
25 Maloney's e-mail there?

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Hartney - Redirect

1 A. I corrected the dates on the searches and reran them and
2 re-reviewed all the results.

3 Q. With these Isikoff e-mail addresses, did anything new turn
4 up when you expanded the date range?

5 A. I don't recall. I don't think so.

6 Q. You don't recall or you don't think so?

7 A. I think there was one e-mail to John Fawcett that talked
8 about some privilege log. I don't know if I got that before
9 the searches or after the searches. That would have been the
10 only thing I could think of.

11 Q. Now, if you can turn to Exhibit 66. The date of this
12 e-mail is September 26. And this is from Ms. Benett to you.
13 She writes, "Just confirming. I need all incoming and outgoing
14 and in any delete folders of the following e-mail addresses
15 between June 1 and August 1:" And then there is a bunch of
16 e-mail addresses, four addresses for Mr. Isikoff. Do you see
17 that?

18 A. Yes.

19 Q. Did you rerun the search again at that time?

20 A. Yes. I would have reran the search, yes.

21 Q. Do you know whether this turned up anything new that you
22 hadn't found earlier?

23 A. No, it didn't.

24 Q. It was the same?

25 A. The same, yeah.

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Hartney - Redirect

1 Q. But Ms. Benett is not asking you here for all of the e-mail
2 addresses that hit on the word "Jarrah," is she?

3 A. No.

4 Q. And she is not asking you to rerun the searches that hit on
5 the name of the transcript file?

6 A. No, she is not.

7 Q. It's just the incoming and outgoing with Mr. Isikoff,
8 correct?

9 A. Correct.

10 Q. So let's take a look at Exhibit 87.

11 If you look, your declaration, the September 27
12 declaration, begins, if you look at the bottom right-hand
13 corner, at 19 of 53.

14 A. Wait. You said 87?

15 Q. Yes. Tab 87, page 19 of 53.

16 A. OK.

17 Q. Do you see this is your declaration that you were just
18 looking at with Mr. Shen a few minutes ago?

19 A. Correct.

20 Q. Now, if we look at the third page of your declaration,
21 which is actually page 21 of 53, I want to focus your attention
22 for a minute on paragraphs 8, 9 and 10.

23 A. Correct.

24 Q. In light of the fact that we just looked at the e-mail
25 where Ms. Benett, who was helping you with this declaration,

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Hartney - Redirect

1 asked for all of the e-mails responsive to the search described
2 in paragraph 8, do you think it's possible that there was an
3 error and that paragraphs 9 and 10 are reversed? In other
4 words, that paragraph 10 was intended to refer to the results
5 of the searches described in paragraph 8 as opposed to the
6 results of the searches described in paragraph 9?

7 Is that too confusing a question?

8 A. No. I believe so. Because the only e-mail results found,
9 it was my understanding, was the searches on the e-mail
10 addresses. And that's what confused me.

11 Q. So, despite what the words say, which is undoubtedly
12 confusing here, was it your intention that you were attaching
13 only the e-mails that hit on the Isikoff e-mail addresses,
14 incoming and outgoing and deleted?

15 A. Yes.

16 Q. Mr. Hartney, something else came up. In connection with
17 preparing your declaration with Ms. Benett, did Ms. Benett
18 force you to sign anything that you thought was not truthful?

19 A. No.

20 Q. Can you tell me what your discussions with Ms. Benett about
21 your declaration were?

22 A. Basically, it was to describe where the location of the
23 document was found on our internal network server, and also to
24 determine where the location was of the transcripts that were
25 classified, and searching of the e-mail.

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Hartney - Redirect

1 Q. Did Ms. Benett pressure you to write your declaration in
2 any particular way that you were not comfortable with?

3 A. No.

4 Q. Is it your opinion that Ms. Benett would ever pressure you
5 to do something you were not comfortable with?

6 A. No.

7 Q. Did you discuss the language with Ms. Benett and why things
8 were drafted the way they were?

9 A. Yes.

10 Q. Did Ms. Benett provide you good explanations for any
11 questions that you had about the drafting?

12 A. Absolutely.

13 Q. When you signed the declaration, were you comfortable that
14 it was complete and accurate and not something that Ms. Benett
15 was asking you to sign that you were not comfortable with?

16 A. Yes.

17 Q. I would like to ask you also, there was a discussion about
18 a Dropbox account that Mr. Fawcett had?

19 A. Yes.

20 Q. Do you recall that that Dropbox account was assigned to Mr.
21 Fawcett's Kreindler e-mail address?

22 A. Yes.

23 Q. And do you recall that when Mr. Fawcett's Kreindler e-mail
24 address was shut down, that you were comfortable that he would
25 no longer be able to access that Dropbox account?

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Hartney - Recross

1 A. Yes.

2 Q. In fact, that's true, once he lost his e-mail credentials,
3 he could not access that Dropbox account on the screenshot we
4 were looking at, isn't that true?

5 A. I believe so.

6 MS. KIRSCH: I have no further questions.

7 THE COURT: Thank you.

8 MR. SHEN: Just a few questions, your Honor.

9 RECROSS EXAMINATION

10 BY MR. SHEN:

11 Q. Mr. Hartney, you were asked questions about your
12 declaration. And if you have it in front of you, our Exhibit
13 56F, but it's in the binder that you went over with Ms. Kirsch
14 as well.

15 You were asked questions about whether paragraph 9 and
16 paragraph 10 may have been switched in your declaration. Do
17 you recall that?

18 A. Yes.

19 Q. Now, paragraph 10, if you move it up, that would describe
20 the search reference in paragraph 8, right?

21 A. I believe so, yes.

22 Q. And paragraph 9 describes a search for Jarrah, Isikoff, or
23 the name of the Jarrah transcript, right?

24 A. Correct.

25 Q. Then there is no discussion at all as to what that search

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Hartney - Recross

1 revealed in your declaration, correct?

2 A. Yes.

3 Q. And that wouldn't make any sense for you to just put a
4 search in but not describe what it showed, right?

5 A. I guess, yeah.

6 Q. Now, Ms. Kirsch asked you about the preparation of your
7 declaration and your discussions with Ms. Benett. Do you
8 recall that?

9 A. Yes.

10 Q. Let's look at Exhibit 115.

11 A. You said 115?

12 Q. It's on the screen in front of you as well.

13 Now, Exhibit 115 is a document that's been
14 produced --

15 A. It's not on the screen.

16 THE COURT: The witness's screen has gone black.

17 Q. Do you have the document in front of you, Exhibit 115?

18 A. I believe so.

19 Q. Now, Exhibit 115 is an e-mail produced by the Kreindler
20 firm just this week.

21 Sir, you see at the bottom e-mail from Ms. Benett,
22 dated September 27, 2021, Ms. Benett is sending you a draft of
23 your declaration. Do you see that?

24 A. Yes.

25 Q. And you write back to Ms. Benett on the 27th at 10:27 a.m.

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1 Do you see that?

2 A. Yes.

3 Q. And you identify an issue with the statement that the
4 shared drive is for use only by the Kreindler attorneys and
5 staff involved in this litigation, right?

6 A. Yes.

7 Q. And you actually highlight it in the e-mail, correct?

8 A. Yes.

9 Q. And you tell Ms. Benett that, I don't think it is truthful,
10 correct?

11 A. Correct.

12 Q. And that's because everyone at Kreindler has access to
13 everything on the Case Media server; that's what you write in
14 the e-mail, right?

15 A. Yes.

16 Q. Then Ms. Benett insists on not including that language in
17 the declaration, right? She doesn't want to tell the court
18 that everyone has access to everything, correct?

19 A. Yes.

20 MR. SHEN: No further questions.

21 THE COURT: Thank you, sir.

22 You may step down.

23 (Witness excused)

24 THE COURT: I think we should keep going because we
25 are taking a lot of time here. I would like to call our next

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1 witness and press through at least for another 20 minutes. I
2 think we are going to start early tomorrow because I really
3 want to finish tomorrow, but let's call a witness now.

4 MR. SHEN: Saudi Arabia calls Andrew Maloney.

5 MS. KIRSCH: Does Mr. Hartney have to stay in the
6 courtroom per your order as the others do?

7 THE COURT: Any objection to Mr. Hartney being
8 dismissed from the hearing for good?

9 MR. KELLOGG: No, your Honor.

10 THE COURT: And he doesn't have to come back tomorrow?

11 MR. KELLOGG: No, your Honor.

12 THE COURT: Mr. Hartney, thank you for your service.
13 You are excused and you don't have to return tomorrow.

14 My hope is we can do 20 to 30 minutes of this witness
15 and then break and then start, hopefully, at 9 tomorrow
16 morning.

17 MR. SHEN: Yes, your Honor.

18 THE COURT: You may end up not being able to use the
19 monitor right now.

20 Unfortunately, there is not a HEPA filter and
21 therefore under our court protocols you need to keep your mask
22 on. Second, we are having some IT problems. Ordinarily the
23 screen in front of you might reveal a document. We are on the
24 phone trying to get someone to come up now so maybe we will
25 have somebody.

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Maloney - Cross

1 THE WITNESS: I will roll with it.

2 THE COURT: Until then, you have a very large binder
3 to your right and Mr. Shen may ask you to look at exhibits in
4 that binder.

5 ANDREW J. MALONEY III,

6 called as a witness by the defendants,

7 having been duly sworn, testified as follows:

8 THE DEPUTY CLERK: Please state your full name for the
9 record.

10 THE WITNESS: Andrew J. Maloney III.

11 THE COURT: Thank you, sir.

12 CROSS-EXAMINATION

13 CROSS-EXAMINATION

14 BY MR. SHEN:

15 Q. Good afternoon, Mr. Maloney.

16 A. Good afternoon.

17 Q. Mr. Maloney, you attended the Jarrah deposition on June 17
18 and June 18, correct?

19 A. Remotely, correct.

20 Q. A number of your colleagues at the Kreindler firm attended
21 as well, particularly, Steve Pounian, Megan Benett, and Jim
22 Kreindler, those were the attorneys that attended?

23 A. I was not at their location, but I believe they were all on
24 the line.

25 Q. And a consultant for the firm named Catherine Hunt attended

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Maloney - Cross

1 the deposition as well, correct?

2 A. I don't know. I don't remember seeing her on the screen so
3 I can't tell you.

4 Q. I can represent to you that she is on the appearance sheet.
5 If we had the screen working I can show you, but it is also at
6 Exhibit 32.

7 Now, you know from attending the depositions that
8 there is a real-time feed of the deposition transcript,
9 correct?

10 A. Yes.

11 Q. And you can view that real-time feed on your own home
12 computer as you're watching the deposition, right?

13 A. Yes.

14 Q. And the link to that real-time feed, that's in a chat box
15 of the Zoom application that we used for remote depositions,
16 right?

17 A. I think there was a link in the chat box. When I did it, I
18 usually had a separate laptop that I would use the link to the
19 court reporters real-time, and I would use my other computer to
20 watch the screen of the witness or exhibits displayed. On the
21 Jarrah deposition, I didn't do that because I was in Kansas
22 City.

23 Q. You were the individual who conducted the investigation of
24 the leak at the Kreindler firm once the July 15 Isikoff article
25 came out, right?

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Maloney - Cross

1 A. Yes.

2 Q. Did you ever contact Catherine Hunt to interview her?

3 A. I did not. I don't believe she ever got a copy of the
4 transcript.

5 Q. You never asked her whether she downloaded the real-time
6 transcript?

7 A. I would have known if she had downloaded the transcript. I
8 didn't need to ask her.

9 Q. The real-time transcript?

10 A. I'm not aware that you can do that, but I did not ask her
11 that.

12 Q. Now, sir, you read the July 15 Isikoff article when it came
13 out, correct?

14 A. Yes.

15 Q. And you know that Mr. Isikoff stated that he had a copy of
16 the Jarrah transcript, right?

17 A. Yes.

18 Q. And you know that that article also describes what happened
19 at the Bayoumi and the Thumairy depositions as well, right?

20 A. I don't recall specifically. There may have been a general
21 reference that we had deposed Bayoumi and Thumairy. I don't
22 know if there was a description.

23 Q. Do you recall that there is a discussion about invocation
24 of the Vienna Convention privilege at the Jarrah transcript,
25 and then Mr. Isikoff said that, "The families' lawyers also got

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Maloney - Cross

1 an equally frustrating lack of response in their closed-door
2 video depositions last month with Thumairy and Bayoumi"?

3 MS. KIRSCH: I object. Mr. Maloney just said he
4 doesn't recall the article verbatim. I think it would be
5 better to put the article in front of him.

6 MR. SHEN: I am just refreshing his recollection.
7 A. I don't recall the details of the article except for the
8 reference to -- I remember the title was something about FBI
9 attempting to flip Mr. Jarrah. And I remember the thing that
10 stood out in my mind immediately was his reference to the
11 transcript itself, that he claimed to have a copy of the
12 transcript itself.

13 THE COURT: Mr. Shen, can I interrupt you for one
14 second. We have AV here. Is it worth spending a minute fixing
15 it?

16 Q. Let's look at Exhibit --

17 THE COURT: Hold on. I think we need to have AV
18 interrupt you is the question.

19 Do you want to take a quick look?

20 Thank you so much.

21 BY MR. SHEN:

22 Q. Exhibit 40 in front of you is the July 15 article by
23 Mr. Isikoff. If we could just scroll down --

24 A. Hold on.

25 Exhibit? Sorry.

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Maloney - Cross

1 Q. It's Exhibit 40.

2 Do you recognize this, July 15, 2021?

3 A. Yes. I don't think I saw it in color, but yeah.

4 Q. Now, sir, you said that what struck you about this article
5 is that there is a reference to someone had given Mr. Isikoff
6 the transcript, correct?

7 A. Yes. That he had obtained one, yes.

8 Q. And you understood that to be a serious violation of the
9 protective orders in this case, right?

10 A. Yes.

11 Q. Now, at that time, had you had any discussions with
12 Mr. Isikoff?

13 A. No.

14 Q. Are you aware of any discussions that Mr. Pounian or Ms.
15 Benett of your firm had with Mr. Isikoff?

16 A. Am I aware? I am not aware of any. I think that I at one
17 time would have asked him, and I was told no.

18 Q. Now, you're certainly aware that Mr. Kreindler had
19 discussions with Mr. Isikoff, correct?

20 A. He has had discussions with him at various times over the
21 last few years, as well as probably two dozen other
22 journalists.

23 Q. But he has known Mr. Isikoff for a long time and he
24 frequently speaks with him, right?

25 A. I would not characterize it that way. I don't think that's

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Maloney - Cross

1 accurate.

2 Q. You knew that Mr. Kreindler had spoken to Mr. Isikoff over
3 a number of years, correct?

4 A. Well, as I said, Mr. Kreindler spoke to a number of
5 journalists, including Mr. Isikoff.

6 Q. That's not my question. My question is, did you know that
7 Mr. Kreindler was speaking with Mr. Isikoff over a number of
8 years?

9 A. I would say, no, I didn't know that. I know from time to
10 time he spoke to him. If you are asking me the first time I
11 became aware he spoke to him, was it a few years earlier,
12 possibly.

13 Q. Look at Exhibit 79 in your binder, please.

14 Sir, on page 2 --

15 A. Hold on.

16 I'm with you.

17 Q. Sir, on page 2 of this article about Mr. Isikoff, he
18 describes an interview that James Kreindler gave to him. Do
19 you see that?

20 A. Two thirds of the way down? Yes.

21 Q. And this is, for the record, a March 1, 2021 article.

22 Were you aware that Mr. Kreindler had spoken to
23 Mr. Isikoff in connection with this article?

24 A. I can't recall.

25 Q. Were you aware that Mr. Kreindler had appeared on the

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Maloney - Cross

1 Conspiracyland podcast?

2 A. I was not aware at the time. I found out when we did our
3 investigation of the leak.

4 Q. Did you become aware on or about July 15 right after the
5 Isikoff article came out?

6 A. I don't think it was day one, but it was within the first
7 two weeks, probably. There are numerous searches that we did
8 during the course of the investigation. The first one was to
9 see if there was any transmission of the Jarrah transcript to
10 Mr. Isikoff or anyone at Yahoo News. That's what we looked for
11 initially and then we expanded the search later.

12 Q. Just so I understand your testimony, when the July 15
13 Isikoff article came out, you never asked Mr. Kreindler whether
14 he had been in recent contact with Mr. Isikoff?

15 A. I asked him if he knew anything about the transcript that
16 Mr. Isikoff referred to in the article, and he told me he had
17 no idea.

18 Q. But you never asked him whether he had been in contact with
19 Mr. Isikoff?

20 A. I don't think I put it that way. I was interested in
21 whether or not he knew anything about the transcript getting to
22 Isikoff.

23 Q. I am just asking whether you asked him whether he had been
24 in contact with Mr. Isikoff. Did you ask him that question?

25 A. Not on the first day, no.

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Maloney - Cross

1 Q. When did you ask him that question, if at all?

2 A. Probably within my first week or two of the investigation.

3 Q. Do you specifically recall that?

4 A. I do because we found, when I had the IT, head of IT John
5 Hartney do the search, we eventually found e-mails from Mr.
6 Kreindler to Mr. Isikoff. So I asked him about those.

7 Q. So, when you found out that Mr. Kreindler had appeared on
8 the Isikoff podcast, did you listen to that podcast?

9 A. No, I did not.

10 Q. Have you listened to it to this day?

11 A. I have not.

12 Q. You don't know what Mr. Kreindler said on that podcast?

13 A. I do not.

14 Q. Now, were you aware that Ms. Hunt also had contacts with
15 Mr. Isikoff?

16 A. I can't recall that. It's possible I knew at one time, but
17 I don't recall as I sit here.

18 Q. Do you know that Ms. Hunt appeared on the exact same
19 podcast that Mr. Kreindler appeared on with Mr. Isikoff?

20 A. I was not aware, but I knew that Ali Soufan had appeared,
21 or at least that's what the e-mail traffic showed.

22 Q. Let's look at Exhibit 38, please.

23 Exhibit 38 is a printout of the specific
24 Conspiracyland podcast. You will see it describes who appears
25 on this particular podcast. You see that Ms. Catherine Hunt

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Maloney - Cross

1 and Jim Kreindler appeared on it?

2 A. Are you in -- I am trying to find it here.

3 THE COURT: At the bottom in the black box.

4 Q. It's the second-to-last line in the black box, sir.

5 A. Yes, I see her name there.

6 Q. And sitting here today, this is the first time that you are
7 realizing that Catherine Hunt, an investigator for your firm,
8 appeared on the same podcast that Mr. Kreindler appeared on?

9 A. Yeah. I had never seen this document before.

10 Q. It's not something that you discovered in the course of
11 your, quote, investigation here?

12 A. No. It wasn't relevant to the investigation.

13 Q. You never spoke to Ms. Hunt, you never asked whether she
14 had any discussions with Mr. Isikoff about the Jarrah
15 transcript?

16 A. I did not.

17 Q. Now, when you first saw the July 15 article by Mr. Isikoff,
18 were you aware that Mr. Fawcett had also had contacts with
19 Mr. Isikoff?

20 A. On July 15 was I aware? No.

21 Q. On or about July 15.

22 A. On or about could mean a lot of things.

23 Q. July 15 or prior, did you know that Mr. Fawcett was talking
24 with Mr. Isikoff?

25 A. I did not.

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Maloney - Cross

1 Q. On or around July 15, did you ask Mr. Kreindler if he knew
2 whether Mr. Fawcett was in discussions with Mr. Isikoff?

3 A. I don't recall. If I did, it probably wasn't July 15. It
4 was probably within the first two weeks when we got more
5 information.

6 Q. Did you ever ask that question?

7 A. I may have asked that question, but I don't recall.

8 Q. You don't remember one way or the other?

9 A. I don't.

10 Q. When, to the best of your recollection, when is the first
11 time you learned that Mr. Fawcett had contacts with
12 Mr. Isikoff?

13 A. I think sometime late July, I want to say between July 22
14 and 29, Mr. Hartney told me about e-mails from Mr. Kreindler,
15 to and from Mr. Kreindler and Mr. Isikoff, and one from John
16 Fawcett, and naturally I asked him, did it have anything about
17 Jarrah? And he said no. I later asked to see a copy of each
18 and every one of those e-mails, and there was no mention of
19 Jarrah or the Jarrah transcript.

20 Q. So, the first time you actually learned Mr. Fawcett was in
21 communications with Mr. Isikoff is after Mr. Hartney did the
22 e-mail searches that you directed him to do?

23 A. Well, if you're asking for my memory today, it's the first
24 time I remember, certainly in connection with this. If he had
25 spoken with Mr. Jarrah a year or two before, I wouldn't

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Maloney - Cross

1 necessarily remember that even if I knew it at the time.

2 THE COURT: You mean Mr. Isikoff.

3 A. I wasn't keeping track of every person who spoke to every
4 journalist necessarily. It's possible I knew he spoke to or
5 had contact with Mr. Isikoff at some other time, but not as I
6 remember it in July.

7 Q. You knew that Mr. Kreindler and Mr. Fawcett were speaking
8 with dozens of journalists concerning 9/11?

9 A. I don't think Mr. Fawcett was. I knew Mr. Kreindler was.
10 I was as well.

11 Q. Did you know that Mr. Fawcett was also speaking to
12 journalists?

13 A. No. I should say I know from time to time he was asked to
14 provide a nonconfidential document or something. We often
15 asked Mr. Fawcett to provide us information, and it's possible
16 on occasions I knew that he had said something to a person we
17 had asked him to do or something like that. It was obviously
18 clear every time we always checked to make sure it was not
19 confidential or protected material.

20 Q. So, Mr. Kreindler and yourself, you're the face of the firm
21 and you speak to the press about the 9/11 case, right?

22 A. I do on occasion.

23 Q. And when you need to provide documents to the press, you
24 enlist Mr. Fawcett to provide those documents, right?

25 A. Yeah. Usually I would have him give me the document. I

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Maloney - Cross

1 would look it over and determine whether it is something we can
2 make available.

3 Q. Before Mr. Fawcett actually provides the document, he seeks
4 the approval of the attorneys at the firm?

5 A. Yes.

6 Q. Now, you're certainly aware of Mr. Kreindler's history of
7 violating the protective order in this case, right?

8 MS. KIRSCH: Objection.

9 THE COURT: Overruled.

10 You can answer it.

11 A. I am aware of the Dartmouth speech. I think I was actually
12 in the court when Judge Netburn admonished him for saying
13 something.

14 Q. You're also aware he violated the protective order in
15 connection with the 2017 Politico article by Caleb Hanan. Are
16 you aware of that?

17 A. Vaguely. I do remember some of that. I don't remember the
18 details.

19 Q. So, you're aware of multiple times that Mr. Kreindler had
20 violated the protective order, correct?

21 MS. KIRSCH: I am going to object. That misstates the
22 record.

23 THE COURT: Sustained.

24 Continue.

25 Q. Sir, you're aware and you have heard Mr. Kreindler express

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Maloney - Cross

1 his disdain for the protective orders in this case, right?

2 A. I have heard many people say that, including Mr. Kreindler.

3 Q. You have heard him call the protective orders damn gag
4 orders?

5 A. Yeah, I have probably heard him say that. I have heard
6 that from almost every one of our clients.

7 Q. You heard him say those orders are disgusting, you have
8 heard that, right?

9 A. I never heard it. I think I read that in one of the
10 articles.

11 Q. You have heard him say that he hates the protective orders
12 in this case?

13 A. We all do, every client and every lawyer on the plaintiffs'
14 side.

15 Q. So every lawyer on the Kreindler side, yourself included,
16 Ms. Benett, who is sitting at counsel table, you hate the
17 protective orders that the court has entered in this case. Is
18 that your testimony?

19 A. My testimony is that I can tell you I have never been
20 involved in a case where everything is kept secret from our own
21 clients.

22 Q. You just testified that you and all the lawyers at the
23 Kreindler firm hate the protective orders, right?

24 A. That was your words, Mr. Shen.

25 MS. KIRSCH: I am going do object. That misstates his

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Maloney - Cross

1 testimony.

2 Q. Sir, when the July 15 --

3 MR. SHEN: I am going to move on and withdraw the
4 question.

5 Q. Sir, when the July 15 Isikoff article came out and it
6 stated that he had a copy of the Jarrah transcript, which was
7 leaked to him, were you concerned, given Mr. Kreindler's
8 extensive violations of the protective order and his disdain
9 for the protective order, that he was the source of the leak?

10 MS. KIRSCH: I would like to object one more time. I
11 don't know how many times Mr. Shen is going to misstate the
12 record. I don't know what he is talking about with "extensive
13 violations," but it makes a very messy record to bake that into
14 a question that Mr. Maloney could possibly otherwise answer.

15 MR. SHEN: Mr. Maloney testified to two violations of
16 the protective order, the Dartmouth speech and the 2017 order.
17 A. I didn't say they were violations of the protective order.
18 I said I was aware of two or three occasions where that issue
19 was discussed.

20 Q. Now, sir, given those issues and given the disdain that Mr.
21 Kreindler has expressed with the protective order, were you
22 concerned at the time that he was the source of the leak?

23 A. I was not.

24 Q. Did you have any concern that anyone at Kreindler was the
25 source of the leak?

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Maloney - Cross

1 A. I was not. I asked everyone and then I did my own
2 investigation to confirm that.

3 Q. But before you conducted the investigation, were you
4 confident that Kreindler wasn't the source of the leak?

5 A. Yes.

6 Q. So, before doing anything, in your mind, you said it
7 couldn't have come from this firm, correct?

8 A. In my own mind, before I spoke to him, I would have been
9 very surprised if it came from the firm. Then I started to ask
10 people that had access to the transcript and I was told they
11 had nothing to do with it and didn't know anything about. And
12 then I started the e-mail investigation with IT.

13 Q. You submitted two declarations in this case?

14 A. Yes.

15 Q. There is the August 16 declaration that's at 48.C in the
16 binder.

17 A. I recall.

18 Q. The September 27 declaration, for the record, that's at
19 Exhibit 56B.

20 Now, you're aware, sir, that the August 16 declaration
21 in this case, it doesn't describe any investigation that was
22 conducted, right?

23 A. We were not asked by the court to describe it. We gave the
24 court what the court asked for.

25 Q. So, after the leak occurred, you took the initiative to do

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Maloney - Cross

1 the investigation?

2 A. Yes.

3 Q. That was you and Mr. Hartney?

4 A. Yes.

5 Q. Anyone else involved in that investigation?

6 A. I don't think so. I asked everybody else. I told
7 everybody else what I was doing after I had begun it. I don't
8 think they were involved. I think Ms. Benett later got
9 involved when we did another sweep, probably a triple check,
10 I'd say, much later in the process. But the first month it was
11 myself and Mr. Hartney.

12 Q. So Ms. Benett might have gotten involved when you were
13 submitting the September 27 declaration, but certainly not the
14 August 16 declaration?

15 A. I'm not sure when she got involved, but I know the initial
16 part of the investigation, for the first few weeks, was just
17 myself and Mr. Hartney.

18 Q. Let's look at the actual declaration, 56B.

19 Let's look at paragraph 4.

20 A. Paragraph 4?

21 Q. Paragraph 4.

22 A. Yes. My declaration.

23 Q. It says that "I learned on July 15," and it talks about the
24 article, right?

25 A. Yes.

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Maloney - Cross

1 Q. Then it says, "That day I discussed the article with others
2 at Kreindler working on the 9/11 litigation." Do you see that?

3 A. Yes.

4 Q. And who did you actually discuss that article with on the
5 15th?

6 A. I believe Jim Kreindler, Steve Pounian, possibly Megan
7 Benett and John Fawcett, and I think that was it, and myself.

8 Q. Did you discuss it with them in person?

9 A. No. I did discuss it with Mr. Fawcett in person because I
10 think he was in the office and I was in the office that day,
11 and I think the others were not in the office that day.

12 Q. Did you say you did discuss it with Mr. Fawcett in person?

13 A. Yes, I believe so.

14 Q. And the two of you were the only ones in the office that
15 day?

16 A. No. But in terms of the terror group that had access, he
17 and I were in there. I don't think anybody else was. It's
18 possible Ms. Benett was, but I don't recall speaking to her in
19 person, but I remember we had a phone call.

20 Q. You don't recall Mr. Pounian being there in person?

21 A. I don't believe he was, but I can't recall. I don't
22 believe he was.

23 Q. You don't recall Mr. Kreindler being there in person?

24 A. He was not.

25 Q. Now, in these discussions with your colleagues at the

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Maloney - Cross

1 Kreindler group -- and these were the core members of the 9/11
2 team, right?

3 A. Yes.

4 Q. So Mr. Fawcett is included in that core group that
5 litigates this case?

6 A. He is not a lawyer litigating it, but he is part of the
7 team, yes.

8 Q. He is the only nonlawyer in that group, right?

9 A. Well, no, we have other nonlawyers that are part of the
10 team. I think they have been identified, and we have
11 paralegals, and we have a lot of consultants and investigators.

12 Q. My question to you is just Mr. Fawcett was a core member of
13 the 9/11 team?

14 A. Can you define core?

15 Q. Key member, very important member.

16 A. Certainly.

17 Q. Now, in these discussions on July 15, did you ask whether
18 the other core members of your team had discussions with
19 Michael Isikoff?

20 A. I asked if any of them knew anything about how Mr. Isikoff
21 got the Jarrah transcript.

22 Q. If you could answer my question, please.

23 A. I think I did.

24 Q. Did you ask whether they had contact with Mr. Isikoff?

25 A. I didn't put the question that way. I asked them the way I

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Maloney - Cross

1 just told you.

2 Q. You asked each member of the team, is that your testimony?

3 A. We had a conversation about it.

4 Q. You asked Ms. Benett, for instance?

5 A. I think on the call I said, does anybody know how
6 Mr. Isikoff got a copy of the Jarrah transcript? Everyone
7 said, No, no idea. I have no idea how he got it, it didn't
8 come from me, words to that effect.

9 Q. You posed a question to the entire group and you got
10 negative responses in general?

11 A. Correct.

12 Q. But you never sat down one-on-one with each of the lawyers
13 and asked them?

14 A. On that first day I didn't. We had multiple conversations.

15 Q. Sir, did you ever do that?

16 A. Face-to-face?

17 Q. One-on-one, face-to-face.

18 A. With several of them I did. Some of them it was, again,
19 phone calls. Mr. Kreindler in particular was probably phone
20 calls. Ms. Benett was probably in person at one time or
21 another. Mr. Pounian in person at one time or another. Mr.
22 Fawcett. Probably the only one I didn't have a face-to-face
23 with was Mr. Kreindler.

24 Q. So I understand your testimony, you sat down face-to-face
25 with Mr. Fawcett, asked him whether he leaked the transcript to

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Maloney - Cross

1 Mr. Isikoff, and he told you he had not?

2 A. Correct. I didn't sit down; I was standing.

3 Q. So he lied to your face?

4 A. He did not tell me the truth.

5 Q. That's lying to you, right?

6 A. Yeah. He didn't tell me the truth.

7 Q. How many times did he lie to you about that?

8 A. Throughout the next several weeks it was a topic of
9 conversation for all of us. At one point I asked him, and
10 everyone else, if you didn't send it to Mr. Isikoff, did you
11 send it to anybody? So I asked that of Mr. Fawcett.

12 Q. And he said he didn't send it to anybody?

13 A. That's not correct.

14 Q. What did he say?

15 A. He said he sent it to one of our consultants who is
16 identified as Consultant-1. He told me that either the first
17 day or second.

18 Q. How many times did he tell you that he did not send the
19 transcript to Mr. Isikoff?

20 A. Well, I would say, it depends on how -- if you want those
21 exact words, probably only once. But there was certainly a
22 clear indication when I said, did you send it to anyone or
23 anyone else, or things like that, and the answers I got to me
24 were consistent that he was claiming he didn't send it to
25 Isikoff or didn't know how Isikoff got it. So it wasn't quite

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Maloney - Cross

1 the same words that you used, but it was the same conclusion.

2 Q. Each and every one of those interactions you had with him
3 he lied to you, is that right?

4 A. Yeah. He wasn't candid. He didn't tell me or anyone, to
5 my knowledge, that he had sent Mr. Isikoff the Jarrah
6 transcript.

7 (Continued on next page)

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LB1H9117

Maloney - Cross

1 Q. All right. Let's look at paragraph 5 of your declaration,
2 sir.

3 THE COURT: Mr. Shen, let's just be sensitive to the
4 time, when you think it's an appropriate time to take a break
5 for the day.

6 MR. SHEN: Whenever you want. I don't have a watch.

7 THE WITNESS: They took mine at security.

8 THE COURT: It's ten past 5:00. You want to go for
9 another five or ten minutes, or you want to wrap up?

10 THE WITNESS: I'd rather go as long as Mr. Shen
11 and the --

12 THE COURT: I know, but we have the court reporters.

13 MR. SHEN: Let's go for another five minutes or so,
14 and then we'll wrap up.

15 THE COURT: OK. Thank you.

16 BY MR. SHEN:

17 Q. Paragraph 5 of your declaration discusses conferring with
18 Mr. Hartney on July 16. Do you see that?

19 A. Yes.

20 Q. And, sir, you're a former prosecutor?

21 A. Yes.

22 Q. At the S.D.N.Y.?

23 A. Yes.

24 Q. So you have experience investigating these types of issues?

25 A. Yes.

LB1H9117

Maloney - Cross

1 Q. And you understood here that the goal was to conduct an
2 objective and comprehensive investigation to determine whether
3 anyone at the Kreindler firm was the source of the leak, right?

4 A. Yes.

5 Q. And if someone was, in fact, the source, the goal was to
6 investigate whether anyone had knowledge of it or directed
7 Mr. -- or whoever did it to do it, right?

8 A. Well, yeah, that would be part of the investigation.

9 Q. OK. Now let's look at Exhibit 100, please.

10 A. My copy, the print is extremely small, Mr. Shen.

11 Q. I apologize for that. That's just the way it was produced
12 to us. Is your screen working?

13 A. Nope.

14 Q. All right. Now, on Exhibit 100, this is an email chain
15 between you and Mr. Hartney. Do you see that? And it's on
16 July 16?

17 A. I have -- there's a couple email strands here. So there's
18 one on June 28 and then there's a July 16 and a September 24.

19 Q. Let's put it in context.

20 The June 28, that is an email from the court reporter
21 forwarding on the transcript for the Jarrah deposition, right?

22 A. Yes, correct.

23 Q. And then on July 16, in the bottom paragraph, you're asking
24 Mr. Hartney to do a review, correct?

25 A. Yes.

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Maloney - Cross

1 Q. Specifically, you're asking him if it's possible to do a
2 search of the outgoing emails on the K and K -- that's
3 Kreindler & Kreindler, right?

4 A. Yes.

5 Q. -- server on June 28 that contains the Jarrah transcript.
6 And then you say you can limit that search, if you'd like, to
7 the following individuals, and it lists eight individuals. Do
8 you see that?

9 A. Yes.

10 Q. And that's the search that you're describing in paragraph 5
11 of your declaration when you say: On July 16, I conferred with
12 Mr. Hartney and asked him to do a search, right?

13 A. Yes.

14 Q. OK. This particular search, you asked him to do just a
15 search of the outgoing emails, not a search of the entire email
16 server, correct?

17 A. Correct.

18 I should point out, to your last question on my
19 declaration, which is August 16, we did subsequent searches
20 after this initial search.

21 Q. We'll get there.

22 A. OK. I didn't want -- I didn't want you to be confused or
23 have the record confused that this was the only search I had
24 him do, but the one to begin the search on July 16, that was
25 what I sent to him.

LB1H9117

Maloney - Cross

1 Q. You're asking him to do a search only of outgoing emails.
2 You're not asking him to search for incoming emails, right?

3 A. Correct.

4 Q. And you're asking him to do a search only of particular
5 custodians, not of everybody at Kreindler & Kreindler, right?

6 A. Yeah, nobody else had access to the transcript that I was
7 aware of at Kreindler.

8 Q. OK. Sir, do you know, for instance -- well, strike that.

9 You're not asking him to search for any personal
10 devices, personal laptops, personal email accounts, none of
11 that, right?

12 A. No. I think the email server at the firm would have
13 detected if somebody sent an email to --

14 Q. From a firm email?

15 A. From a firm email, yeah.

16 Q. But not from a personal email?

17 A. You asked me about telephones. I don't know how -- I'm not
18 tech savvy, but I don't think you can do that.

19 Q. My question to you is just did you direct Mr. Hartney to
20 search personal --

21 A. Personal.

22 Q. -- laptops?

23 A. Of everybody at the firm or everybody on the terror team?

24 Q. Yes, sir.

25 A. No.

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Maloney - Cross

1 Q. And you never asked him to do that, right?

2 A. No.

3 Q. Let's look at Exhibit 84.

4 Now, you discussed, Mr. Maloney, that there were some
5 subsequent searches that you asked Mr. Hartney to do, right?

6 A. Yes.

7 Q. This is an email on July 21 to you and the "terror team,"
8 right?

9 A. Yes.

10 Q. So it discusses two searches. The first email talks about
11 the outgoing email boxes for the Jarrah transcripts. That's
12 what we saw you asked him to do on July 16, right?

13 A. Yes.

14 Q. And then you asked him to search for any emails to Mike
15 Isikoff in the last month, and he says he'll finish that search
16 tomorrow, right, so by the 22nd?

17 A. Yes.

18 Q. All right. And, again, in this second search, this is just
19 of the firm email server, right? This isn't any personal
20 emails or personal devices?

21 A. I had no reason to believe that anybody used a personal
22 device to communicate with Mr. Isikoff.

23 Q. OK.

24 A. And certainly not to be able to export a transcript.

25 Q. You know, sir, that the firm email accounts are monitored,

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Maloney - Cross

1 right? The IT department has the ability to search them?

2 A. Yes.

3 Q. You're actually asking the IT department to search them
4 here?

5 A. That's exactly what I was doing.

6 Q. If someone were to leak the transcript and didn't want to
7 get caught, wouldn't it stand to reason they would do so over a
8 personal account and not firm account?

9 MS. KIRSCH: Objection.

10 Q. Asking for your opinion.

11 A. You're asking me to speculate in terms of what I believed.

12 Q. Yeah. I'm not asking you to speculate. I'm asking what
13 you believe.

14 A. Ask your question.

15 Q. So you know the email accounts at the firm are monitored?

16 A. Yes.

17 Q. People can search them, right?

18 A. Yes.

19 Q. If someone wanted to leak the transcript, doesn't it stand
20 to reason that they wouldn't do it over a medium that could be
21 easily monitored and discovered?

22 A. Listen, if somebody had access to the transcript and wanted
23 to hide the fact that they were going to leak it, I guess there
24 are -- there may be infinite ways to do it, but, typically, I
25 would have thought if they -- the transcript was only available

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Maloney - Cross

1 on the Kreindler server, they would email it to themselves,
2 maybe their laptop or a different email address, and we would
3 have picked that up.

4 Q. When you say "different email address," you mean a
5 different email address, personal email address?

6 A. Any email address we would have picked up.

7 Q. And, sir, we discussed this, but you're a former federal
8 prosecutor, right?

9 A. Yes, you've asked me that.

10 Q. You know how to do these investigations?

11 A. I've never investigated a leak, but I've done plenty of
12 investigations.

13 Q. And as a former prosecutor, in your mind, it wasn't
14 reasonable for you to conclude that you needed to search the
15 personal emails and the personal devices of the terror team and
16 anyone else who had access?

17 A. That's not a reasonable request, no.

18 Q. OK. Now let's look at Exhibit 86. 86 is a text message
19 between you and Mr. Hartney, right?

20 A. Yes.

21 Q. And it's dated July 22, 2021, right?

22 A. Yep.

23 Q. So you're communicating with Mr. Hartney over text message,
24 right?

25 A. Yes.

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Maloney - Cross

1 Q. On your personal device?

2 A. Yeah.

3 Q. Not over firm emails. Your firm email search wouldn't pick
4 this up, right?

5 A. No, the firm email would not pick this up, no.

6 Q. And you actually do business over text. You text a lot of
7 people for work, right?

8 A. Not very many. There's only basically office people, and
9 it's usually if I'm not in the office and I'm not at my
10 desktop. If, let's say, I'm somewhere else, I may text them to
11 get their attention.

12 Q. But you're doing that here, right?

13 A. Yeah, I did that here.

14 Q. And this is a message that would not have been found
15 through a search of the email server, right?

16 A. Correct.

17 Q. All right. And Mr. Hartney's actually telling you what the
18 results of his search are in this text message, right?

19 A. Yes.

20 Q. And he says that, well, we found communications between
21 Mr. Kreindler and Mr. Isikoff discussing "lifting of gag order
22 and Isikoff writing an article," right?

23 A. Yeah, I see that.

24 Q. So at this point, July 22, you know for sure that
25 Mr. Kreindler and Mr. Isikoff are having discussions, right?

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Maloney - Cross

1 A. Yeah, I think I testified to that.

2 Q. Right. You also know, and you testified before, that at
3 around this time you also knew that Mr. Fawcett was having
4 discussions with Mr. Isikoff?

5 A. I think in a subsequent communication or conversation with
6 Mr. Hartney, I did learn that, probably within days of this, if
7 not that day, certainly that week, I think. I think I
8 testified somewhere between July 22 and 29th.

9 MR. SHEN: OK. Is it a good time to stop, your Honor?

10 THE COURT: I think so.

11 MR. SHEN: All right.

12 THE COURT: All right. Given the pace, I think we
13 should start earlier tomorrow. And I confirmed with the court
14 reporters that they can start as early as 9:00, so unless
15 anyone has a reason why they can't be here at 9:00, I'd like to
16 start at 9:00. We'll finish tomorrow. So if we need to start
17 pacing folks, we will, but I'll ask the lawyers to please be
18 sensitive to the time. So we'll start here directly at 9:00.

19 Sir, you will remain under oath. The direction not to
20 discuss the nature of your testimony or the underlying issues
21 remains. You're not to speak with the witnesses who testified
22 or the witnesses who have not testified about the nature of
23 your testimony or their testimony, and then you'll come back
24 here at 9 a.m. tomorrow.

25 THE WITNESS: Am I allowed to speak to my counsel, or

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Maloney - Cross

1 no?

2 THE COURT: Yes, of course.

3 Anything further from anyone?

4 MS. KIRSCH: I just wanted to raise it appears
5 Ms. Benett has a commitment that would make her not able to be
6 here at 9:00. We can certainly start without her if that's
7 fine. I just wanted to make sure that if it was 9:30, that
8 your Honor didn't think she was just being late.

9 THE COURT: Do you mind if we begin at 9:00 and you
10 join us at 9:30, Ms. Benett?

11 MS. BENETT: No, that's fine. I just have to drop my
12 son at school. I will be here right after that.

13 THE COURT: Sorry for the inconvenience.

14 MR. KELLOGG: Your Honor, just for my understanding of
15 the rules, counsel cannot talk to the remaining witnesses that
16 have not appeared yet about what happened in court today or the
17 exhibits on cross.

18 THE COURT: Correct. You can speak to your counsel,
19 but you can't reveal the nature of the testimony from today.

20 All right. You're excused. We'll see you tomorrow
21 morning at 9:00.

22 Thank you, everybody.

23 (Adjourned to November 2, 2021, at 9:00 a.m.)
24
25

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LB289111

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 In re Terrorist Attacks on
4 September 11, 2001

03 MD 1570 (GBD)(SN)

Hearing

-----x

5 New York, N.Y.
6 November 2, 2021
9:00 a.m.

7 Before:

8 HON. SARAH NETBURN,

9 U.S. Magistrate Judge

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1 (Hearing resumed)

2 THE COURT: Good morning, everybody.

3 A few quick housekeeping matters. Because we switched
4 the start time to 9, the phone call-in line is not available
5 until 9:30. The press is here and listening both, I think,
6 some in the room, as well as in the press media room of the
7 courthouse. We have an overflow room in courtroom 15A.
8 Obviously, this courtroom is open to the courtroom. We are
9 doing the best we can to give full access as much as possible,
10 but we won't have the AT&T line available to the public until
11 9:30.

12 On that point, around 9:30 I am going to ask the
13 lawyers to literally give a 60-second break. Ms. Slusher is
14 going to patch in the AT&T line while I will hear it over the
15 speakers that it's happening. We just need 60 seconds to do
16 that. So around 9:30, I will ask you to take a quick moment to
17 patch us in.

18 I think that's the end of the housekeeping. You can
19 begin.

20 Mr. Maloney, I will remind that you already took an
21 oath to tell the truth. You remain under that oath.

22 THE WITNESS: Yes, your Honor.

23 THE COURT: Mr. Shen, you may begin.

24 (Continued on next page)
25

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Maloney - Cross

1 ANDREW J. MALONEY III, resumed.

2 CROSS-EXAMINATION (Cont'd)

3 BY MR. SHEN:

4 Q. Good morning, Mr. Maloney.

5 A. Good morning.

6 Q. Yesterday when we had paused for the day you had testified
7 about the e-mail searches that you had conducted and that you
8 had directed Mr. Hartney to conduct, correct?

9 A. Yes.

10 Q. Now, you testified that you did not search any personal
11 e-mails, you didn't search any texts, you didn't search any
12 personal devices, correct?

13 A. Correct. I don't think your firm did either.

14 Q. If you could just answer the question.

15 THE COURT: Mr. Maloney, please answer the question.

16 A. I did not.

17 Q. You did not tell Mr. Hartney to search any of that
18 information, correct?

19 A. I did not.

20 MR. SHEN: Can we show Exhibit 150 on the screen,
21 please.

22 Q. Sir, Exhibit 150 is a text message chain that Mr. Fawcett's
23 counsel has produced to us this week. This is a text message
24 chain with Mr. Isikoff and it shows numerous communications
25 between Mr. Fawcett and Mr. Isikoff.

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Maloney - Cross

1 If you could, please, turn to the second page, and you
2 will see that on July 24th of 2021, Mr. Fawcett writes to
3 Mr. Isikoff and says, "FYI, there is a witch-hunt for the
4 source of your Jarrah story."

5 Do you see that?

6 A. Yes.

7 Q. If you had actually searched personal devices and asked for
8 messages, it would have been clear as day that Mr. Fawcett was
9 the source of the leak, correct?

10 A. No.

11 MS. KIRSCH: Objection. First of all, that's a
12 hypothetical. Second of all, I don't know why Mr. Maloney is
13 being asked about a document that he has never seen.

14 THE COURT: I think it's in connection with the nature
15 of the investigation that was conducted.

16 You can continue.

17 Q. So your testimony is, no, it would not have been clear as
18 day?

19 A. No. It's clear there is communication here. It doesn't
20 indicate in this text that Mr. Fawcett sent Mr. Isikoff the
21 Jarrah transcript. It doesn't state that here.

22 Q. Sir, your testimony is that it would not have been
23 reasonable to conduct any of those searches, that was your
24 testimony, right?

25 A. That is my testimony for the third time.

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Maloney - Cross

1 Q. And you're standing by that testimony?

2 A. I am.

3 Q. Let's look at Exhibit 56.F, please.

4 56.F is the declaration that you submitted in this
5 case.

6 A. That's Mr. Hartney's.

7 Q. We discussed the e-mail searches that you directed Mr.
8 Hartney to conduct. Exhibit 1 of his declaration sets out the
9 e-mails that were located in that search, correct?

10 A. I don't know how to scroll on the computer here.

11 Q. It's in the binder next to you as well. Just take 30 or 45
12 seconds just to scroll through those e-mails.

13 THE WITNESS: Is there a way for me to control it on
14 the screen?

15 THE COURT: No.

16 THE WITNESS: Sorry.

17 A. Remind of the exhibit number, Mr. Shen.

18 Q. 56.F. We are looking at Exhibit 1 of 56.F.

19 A. OK.

20 Q. Mr. Hartney showed you these e-mails after the search,
21 correct?

22 A. Yeah. The e-mails that we are looking right here in this
23 exhibit are from Jim Kreindler or to Jim Kreindler -- between
24 Mr. Kreindler and Mr. Isikoff.

25 Q. And there are some other e-mails in here as well, including

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Maloney - Cross

1 an e-mail from Mr. Fawcett to Mr. Isikoff, if you continue
2 scrolling through.

3 We will take you through some of those e-mails.

4 If you could look, please, at the bottom, there is a
5 page number, look at page 6.

6 A. 6 of 27. Yes.

7 Q. You see this is an e-mail from Mr. Kreindler to
8 Mr. Isikoff?

9 A. Yes.

10 Q. You see that he sent it from his personal device, his
11 iPhone?

12 A. Yes.

13 Q. And you see that this is a communication about the podcast
14 that Mr. Kreindler is going to appear on. Do you see that on
15 July 1?

16 A. Yes.

17 Q. Now, sir, this is the earliest communication that we have
18 between Mr. Kreindler and Mr. Isikoff.

19 It certainly stands to reason that there were earlier
20 communications between the two of them, correct?

21 A. I don't know that.

22 Q. That's not something that you deduced during your
23 investigation?

24 A. Well, I asked Mr. Kreindler about this e-mail, and he told
25 me that there was a program that he and Ali Soufan were on

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Maloney - Cross

1 called Conspiracyland. And I asked him if there was any
2 discussion about Jarrah's deposition, and he said no.

3 Q. That's not the question, sir.

4 A. Well, you asked me a question about my state of mind. So I
5 am telling you my state of mind based on what I see here.

6 Q. Looking at this e-mail, did you deduce that there must have
7 been earlier communications between Mr. Kreindler and
8 Mr. Isikoff?

9 A. I didn't deduce one way or the other. But I asked Mr.
10 Kreindler about this e-mail.

11 Q. Did you ask him if there were earlier communications?

12 A. I asked Mr. Kreindler if he ever discussed the Jarrah
13 deposition. That was the nature.

14 Q. That's not the question.

15 A. Repeat your question.

16 Q. Did you ask if there were earlier communications?

17 A. I didn't.

18 Q. Please look at page 27, please.

19 Do you see that this is a communication between Mr.
20 Kreindler and Mr. Isikoff where Mr. Isikoff is asking about the
21 status of a motion to lift the states secrets privilege and
22 the, quote, gag order?

23 A. I see that.

24 Q. And so, at this point in time, you knew that Mr. Kreindler
25 and Mr. Isikoff were discussing that issue, correct?

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Maloney - Cross

1 A. Yes. I learned this sometime in late July when I got these
2 e-mails that he had asked about that.

3 Q. If you could, please, let's look at page 13.

4 Mr. Hartney showed you this e-mail, which is an e-mail
5 from Mr. Fawcett to Mr. Isikoff, July 12, 2021. Do you see
6 that?

7 A. Yes.

8 Q. And it attaches a priv log, but there is nothing at all in
9 the body of the e-mail. Do you see that?

10 A. Yes. I think I saw the attachment at some point.

11 Q. And you testified that within a few days of Mr. Hartney
12 conducting the search that found Mr. Kreindler's e-mails to Mr.
13 Isikoff you saw this e-mail, correct?

14 A. Yes.

15 Q. Now, this e-mail, where there is nothing in the body of the
16 e-mail, certainly indicates that there must have been other
17 communications between Mr. Fawcett and Mr. Isikoff?

18 A. Why are you assuming that?

19 Q. There is nothing in the body. He is just sending a priv
20 log out of nowhere?

21 Mr. Maloney, you think that unsolicited Mr. Fawcett
22 just out of nowhere sent a privilege log to Mr. Isikoff?

23 A. I don't know one way or the other. I am just telling you.

24 Q. Did you ask him?

25 A. Yes, I did ask him.

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Maloney - Cross

1 Q. What did he say?

2 A. He said Mr. Isikoff wanted to confirm the existence of the
3 2016 FBI summary, and he gave him the privilege log that had it
4 listed right there.

5 Q. Did you ask him whether there were other communications?

6 A. I asked him if he talked to Mr. Isikoff about the Jarrah
7 deposition.

8 Q. Not the question. Did you ask him if there were earlier
9 communications?

10 A. I probably did because I wanted to know the context, as you
11 just indicated, of why he sent him a privilege log, so yes.

12 Q. You're testifying under oath. Did you or did you not ask
13 him about earlier communications?

14 A. I must have asked him why did you send this, and he must
15 have told me he asked for it. Obviously, there was a prior
16 communication about that, either with Mr. Fawcett and
17 Mr. Isikoff, or maybe Steve Pounian or Megan Benett or Jim
18 Kreindler or a client. There is a lot of possibilities here.
19 You're making an assumption that he got the request directly
20 from Mr. Isikoff.

21 Q. Now, sir, you knew that Mr. Kreindler, and we saw the
22 e-mail on page 27, the date of that e-mail is July 13, 2021,
23 Mr. Kreindler and Mr. Isikoff are discussing lifting the states
24 secrets privilege.

25 On July 12, 2021, Mr. Fawcett sends a privilege log

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Maloney - Cross

1 listing the documents that are subject to the states secrets
2 privilege. Do you see that?

3 A. Yes.

4 Q. Now, it's certainly the case that Mr. Fawcett was doing
5 that at Mr. Kreindler's direction, right?

6 MS. KIRSCH: Objection. That mischaracterizes prior
7 testimony. It's assuming a fact that's not in the record and
8 it's kind of badgering the witness. It's misleading.

9 A. I actually answered that question.

10 THE COURT: Please let me respond to your lawyer's
11 objections first.

12 I don't think it assumes facts because I think it was
13 an open question. I think a hypothetical is OK. But I will
14 ask Mr. Shen to ask the question more directly, please.

15 Q. Sir, at the time that you looked at this e-mail, did you
16 deduce that Mr. Fawcett was instructed by Mr. Kreindler to send
17 this privilege log to Mr. Isikoff?

18 MS. KIRSCH: Asked and answered.

19 THE COURT: Overruled.

20 A. I asked Mr. Fawcett why he sent the privilege log, and he
21 told me that Mr. Isikoff was looking for corroboration for
22 existence of the 2016 report. I didn't cross-examine him and
23 say, Did Jim Kreindler ask you to do that, or did Mr. Isikoff
24 ask for that from you directly? I didn't ask that part. But I
25 did ask, Did you discuss anything about the Jarrah deposition?

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Maloney - Cross

1 And he said no.

2 Q. Just to be clear, you never asked Mr. Fawcett if Mr.
3 Kreindler asked him to do that?

4 A. I may have. I don't recall. But the import of the
5 conversation was that there was a request by Mr. Isikoff for
6 corroboration of the existence of the 2016 report. And he
7 provided the document, and as you see, there is no
8 communication other than a transmission of the document here.
9 And after I questioned Mr. Fawcett, I was satisfied that there
10 was no reason to believe that they discussed the Jarrah
11 deposition, or forwarded it. In fact, these e-mails and
12 these -- these e-mails in front of me seem to confirm that
13 there was no communication about the Jarrah deposition.

14 Q. Sir, at the time, you were not able to connect the dots in
15 your own head that Mr. Kreindler had directed Mr. Fawcett to
16 provide this to Mr. Isikoff?

17 A. I didn't make that assumption.

18 Q. So at this point, we are talking shortly after July 22
19 where Mr. Hartney has provided you with all of these e-mails,
20 you knew that multiple members at your firm were in discussions
21 with Mr. Isikoff, correct?

22 A. Well, there's, I think, three e-mails from and to Jim
23 Kreindler, one about the gag order, which we covered --

24 Q. Just answer my question, please.

25 A. I am trying to answer your question, Mr. Shen. When you

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1 say multiple, I am saying there are three from Jim Kreindler
2 and one from John Fawcett. I am being exact and precise rather
3 than the sweeping generalizations you make.

4 THE COURT: Sir, you're not helping yourself. Please
5 just answer the questions.

6 Q. Sir, at this point in time, you knew multiple members of
7 your firm had been in contact with Mr. Isikoff?

8 A. I knew that Mr. Kreindler had and Mr. Fawcett.

9 Q. And Ms. Hunt, too, because she appeared on the podcast,
10 right?

11 A. I did not know that.

12 Q. It did not come up in your investigation?

13 A. No.

14 Q. So you knew that Mr. Kreindler and Mr. Fawcett had also
15 attended the Jarrah deposition and knew exactly what transpired
16 at that deposition, right?

17 A. Yes.

18 Q. You also knew that they had access to that deposition?

19 A. Yes.

20 Q. You also knew that they attended the Thumairy and Bayoumi
21 deposition?

22 A. Yes.

23 Q. You also knew they had access to that deposition, right?

24 A. Yes.

25 Q. And you knew that Mr. Isikoff had written about what

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1 happened at the Bayoumi and Thumairy depositions?

2 A. I don't recall.

3 Q. We went over this yesterday.

4 A. I didn't read the entire article. You directed me to the
5 portions you wanted me to. Everybody knew that Mr. Bayoumi and
6 Thumairy were being deposed. There was nothing that stood out
7 about that.

8 Q. So on July 15, you didn't read the entire article written
9 by Mr. Isikoff, is that your testimony?

10 A. No, that's not my testimony.

11 THE COURT: Mr. Shen, may I remind you to speak a
12 little more slowly so the court reporter can get it.

13 MR. SHEN: Yes, your Honor.

14 Q. You also knew that Mr. Kreindler had been communicating
15 with Mr. Isikoff through his personal device, correct?

16 A. I didn't know that until recently when we downloaded
17 everybody's cell phone.

18 Q. But you knew that because he was e-mailing from his iPhone?

19 A. I think I saw the e-mails. The text messages I don't think
20 I had.

21 Q. I am not asking about the text messages. I am asking about
22 the e-mails. It said they were sent from his iPhone.

23 A. But that's using the Kreindler server. That's how we found
24 his e-mails. When you send an e-mail from your phone, it's as
25 if you're sitting at your desk so I saw them.

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1 Q. But on your phone you also have your personal e-mail,
2 right?

3 A. Yeah. I have a Gmail account.

4 Q. That you can access on your personal phone?

5 A. Yes.

6 Q. If someone sends an e-mail message to you on your Kreindler
7 account, you can forward that from your Gmail account, right?

8 A. I would have to forward it from my Kreindler account to my
9 Gmail account.

10 Q. You're sure about that?

11 A. No, but that's what my understanding is.

12 Q. But the fact of the matter is you never asked for Mr.
13 Kreindler's personal phone, right?

14 A. Fourth time, I did not.

15 Q. Or anybody else's?

16 A. Fifth time, I did not.

17 Q. Sir, if anyone at the Kreindler firm had leaked the
18 transcript, the prime suspects must have been Mr. Kreindler and
19 Mr. Fawcett, right?

20 A. Not correct.

21 Q. They were the ones who had communications with Mr. Isikoff?

22 A. That's right. None of those communications showed any
23 evidence that there was a discussion about the Jarrah
24 deposition or the forwarding of the transcript.

25 Q. Now, at this time, did you attempt to screen Mr. Kreindler

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1 and Mr. Fawcett off from the investigation?

2 A. I don't know that I screened anybody off, but I conducted
3 the investigation --

4 Q. So the answer is no, correct?

5 A. When you say "screen," please define it.

6 Q. You were updating them on the investigation?

7 A. Yes. But they weren't part of the investigation, so I gave
8 them the results as they were unfolding.

9 Q. They were the subject, or they should have been the
10 subject, right?

11 A. I made everybody who had access to that deposition
12 transcript the subject of the IT investigation we were
13 conducting, including myself.

14 Q. At this point, was anyone at the Kreindler firm instructed
15 to retain all relevant documents pertaining to this leak?

16 A. I don't recall, but I knew that if they used the Kreindler
17 server, even if they deleted it, we could find it.

18 Q. That's not the question. The question is, did you send out
19 a retention notice?

20 A. I don't believe I did that in July.

21 Q. Was any retention notice ever sent out about personal
22 devices?

23 A. At some point there was.

24 Q. When?

25 A. I think it was much later.

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Maloney - Cross

1 Q. It was after your counsel had made an appearance?

2 A. I believe so. I don't recall the date.

3 THE COURT: Mr. Shen, can we take a 60-second break?

4 MR. SHEN: Yes.

5 (Pause)

6 THE COURT: All right, Mr. Shen. You can continue.

7 BY MR. SHEN:

8 Q. Mr. Maloney, take a look at 56B, which is your sworn
9 declaration submitted in this case. And paragraph 5, please.

10 Now, paragraph 5 says that, "The rough and final
11 Jarrah transcripts are saved in a directory within a network
12 share drive along with materials relating to the lawsuit."

13 Do you see that?

14 A. Yes.

15 Q. Now, that share drive is on Kreindler's internal network
16 server, is that right?

17 A. Correct.

18 Q. And it's called Case Media, is that right?

19 A. Yes.

20 Q. Then you state in your declaration that "only individuals
21 with the Kreindler log-in credentials can access that
22 directory."

23 Do you see that?

24 A. Yes.

25 Q. And that would be everybody who works at the Kreindler

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1 firm, correct?

2 A. As a technical matter, yes, that is correct.

3 Q. So anybody who works at the Kreindler firm simply enters in
4 their Windows log-in and has access to that directory?

5 A. Not exactly.

6 Q. When do they enter in their log-in?

7 A. When you log on to your computer, you're logged into the
8 system. But you would have to know where to go to find
9 materials for the 9/11 case. And everybody at the firm was
10 told you can't have access, you're not permitted, unless you
11 sign a protective order and have a reason to do so.

12 Q. That's what you're claiming now is the firm's policy. But
13 as a technological matter, anyone at the firm can just simply
14 get through, right?

15 MS. KIRSCH: I am just going to object to the first
16 preamble of the question where Mr. Shen is trying to put some
17 twisted testimony in the record. It's not appropriate.

18 THE COURT: This is cross-examination. The question
19 is fine.

20 A. I think as a technical matter, you may be correct. As a
21 practical matter, it's not correct.

22 Q. Now, sir, the Kreindler firm has no ability whatsoever to
23 track who actually accessed any of the confidential and
24 protected information for the 9/11 case, right?

25 A. From the Kreindler server for a Kreindler employee?

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1 Q. That's right. For the Case Media.

2 A. No, we don't have the ability to track. So, for example,
3 if I went into Case Media and looked at it, no one would know
4 that I looked at the document.

5 Q. And you would have no idea if any member who wasn't part of
6 your team looked at that document, right?

7 A. That's true.

8 Q. Even if they didn't sign the protective orders, you would
9 have no way of knowing, right?

10 A. I suppose technically that's true. As a practical matter,
11 that did not happen.

12 Q. Before this whole leak issue came out and you had outside
13 counsel come in, had you made any efforts as a technological
14 matter to limit access to confidential protected information to
15 only individuals who had actually signed the protective order
16 and were working on the case?

17 A. Well, as a practical matter, no. As a technical matter,
18 anybody who was working on the case signed the protective
19 order, nobody who wasn't working on the case sought to gain
20 access to it. I don't understand why you --

21 Q. You don't know that, do you?

22 A. I do know that. I do know that.

23 It's true that I don't know if other people accessed
24 it and then lied about it, but I could tell you nobody else at
25 the firm accessed it.

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1 Q. When you click into that server, is there a warning that
2 comes up that says, don't access this unless you have looked at
3 the FBI protective order or the MDL protective order?

4 MS. KIRSCH: I am going to object once again.

5 First of all, Mr. Shen is arguing and yelling at the
6 witness. Second of all, we all understand that Mr. Fawcett had
7 complete access. This is a little bit of a sideshow, and I
8 think it's taking up a lot of time. Mr. Fawcett had access to
9 the system irrespective of whether Mr. Maloney is correct or
10 not.

11 MR. SHEN: Ms. Kirsch is not here to testify.

12 MS. KIRSCH: We have now spent 20 minutes arguing with
13 Mr. Maloney about something that is not relevant to the issues
14 of this hearing, which is Mr. Fawcett's breach.

15 THE COURT: I disagree because what is relevant is the
16 thoroughness of the investigation, which includes whether or
17 not the systems that were in place by the firm at the outset
18 were sufficient to protect this material. So I disagree with
19 your position that this is not relevant.

20 As to both questioner and answerer, we need to tone
21 down the temperature because we don't need to have a screaming
22 match. It's also not helpful to the court reporter. So
23 everybody is here to cooperate, and we need to bring down the
24 temperature a little bit.

25 Please continue.

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1 MR. SHEN: Yes, your Honor.

2 BY MR. SHEN:

3 Q. Can I have an answer to that question?

4 A. I don't recall the question, but we could have had Fort
5 Knox and Mr. Fawcett was given keys, as the rest of us were.

6 Q. The question is, when somebody logs into the Case Media
7 server, is there a warning screen that comes up that says you
8 can only access this if you signed the protective orders or
9 agreed to abide by them?

10 A. There is no warning screen that says that.

11 Q. So the record is clear, after the leak issues come up and
12 after you have retained outside counsel, you have now put in
13 place a system that restricts access, is that right?

14 A. I believe that's either underway or was done.

15 Q. Now, sir, in paragraph 5, you tell the court, in the last
16 sentence, "Only the following individuals at Kreindler log-in
17 were provided access to the Jarrah transcript."

18 Do you see that?

19 A. Where are you?

20 Q. Last sentence.

21 A. Yes.

22 Q. And, sir, as you just testified, in fact, everybody at
23 Kreindler had access to those transcripts?

24 A. They were not provided access. As a technical matter, we
25 have covered, yes, they could probably get in there if they

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Maloney - Cross

1 knew how to do it and where to find it. They were instructed
2 not to do that, and during the investigation we confirmed that
3 nobody had access.

4 Q. You don't know that?

5 A. They could have all lied to me, Mr. Shen. It's true.

6 Q. You have no ability to track them so you don't know who had
7 access?

8 A. I don't have the ability to corroborate whether they told
9 the truth or not about accessing the 9/11 files.

10 Q. And, Mr. Maloney, you carefully crafted the language in
11 your declaration so that you wouldn't disclose to the court
12 that everyone at the Kreindler firm had access?

13 A. That's not correct.

14 Q. Why didn't you tell the court everyone had access?

15 A. We gave the court what the court asked for. I knew who had
16 access to the Jarrah transcript. Those people were
17 investigated; they were all subjects of the investigation,
18 including myself. And I had the IT guy in charge, who had the
19 technical, logical know-how to do it, conduct the
20 investigation.

21 Q. You think the court didn't want to know that everyone had
22 access to the transcript, is that your testimony?

23 A. I think the court asked us who had access to the Jarrah
24 transcript, and we told the court who had access to the Jarrah
25 transcript.

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Maloney - Cross

1 Q. So sitting here today, you still believe that that
2 statement in your declaration was truthful?

3 A. Nobody else at the firm had accessed the transcript, to my
4 knowledge.

5 Q. OK. Paragraph 6. You say, "Shortly after conferring with
6 Mr. Hartney, I asked each of the individuals listed above if
7 they had sent any portion of the Jarrah transcript to Isikoff
8 or anyone working on his behalf."

9 Do you see that?

10 A. Yes.

11 Q. Now, did you sit down in the room with those individuals
12 and ask them?

13 A. I think we covered this yesterday, but I will go over it
14 again if you would like. Some of them I did speak to
15 face-to-face and others were on the phone and probably e-mails.
16 This was during the summer. We hadn't fully staffed back up
17 after the pandemic, so a lot of people were in and out of the
18 office. So some of them were in person and some of them were
19 probably over the phone.

20 Q. You said some were over the e-mail?

21 A. I don't recall.

22 Q. Did you use a script?

23 A. No.

24 Q. Did you take notes?

25 A. No.

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Maloney - Cross

1 Q. Now, your testimony is that you actually specifically sat
2 down with Mr. Fawcett, looked him in the eye, and he told you
3 that he didn't send the transcript to Mr. Isikoff, is that
4 right?

5 A. I don't think I sat down, but I was in his office and I
6 asked him.

7 Q. And he lied to you, is that your testimony?

8 A. We covered this yesterday.

9 Q. He lied to you?

10 A. He did not tell me the truth.

11 Q. Sir, you're aware that Mr. Fawcett submitted a declaration
12 on September 27?

13 A. Yes.

14 Q. And you're aware that Ms. Benett and Mr. Pounian actually
15 drafted the language of that declaration, right?

16 MS. KIRSCH: Objection.

17 MR. SHEN: I am asking if he is aware.

18 MS. KIRSCH: I object because that's an incorrect
19 statement of facts, and I don't even know where he gets it
20 from. And it's wrong, as the evidence will show.

21 THE COURT: Why don't you ask if he knew who drafted
22 it.

23 BY MR. SHEN:

24 Q. Do you know who drafted it?

25 A. No.

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Maloney - Cross

1 Q. Do you know who modified the language of the declaration?

2 A. Well, it's my understanding Mr. Fawcett drafted his own
3 declaration and Ms. Benett also finished it so it could be
4 submitted to the court.

5 Q. Do you know whether or not there were drafts traded back
6 and forth where Ms. Benett and Mr. Pounian were, quote,
7 polishing off the declaration?

8 A. I do not know. I was not involved in that.

9 Q. Let's look at Exhibit 120, please.

10 Now, Exhibit 120 is an e-mail from -- a Mr. Pounian
11 e-mail chain between Mr. Pounian, Mr. Fawcett, and Ms. Benett,
12 and it attaches at 121 the actual declaration with redlines.
13 Do you see that?

14 MS. KIRSCH: Objection. There is no foundation that
15 the witness ever saw or knows anything about this document.

16 MR. SHEN: I haven't asked the question.

17 THE COURT: I don't think that's a basis of an
18 objection. He can ask questions about the document.

19 A. Yeah. Mr. Shen, what is your question? Do I see it on the
20 paper? Yes, I see it.

21 Q. So you see that Mr. Fawcett is sending redlines to his
22 declaration that he submitted on September 27 to Mr. Pounian,
23 and that's at 7:34 p.m.?

24 A. I don't see anything about redlines. I am reading what is
25 on the screen here. There is no reference to a redline.

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Maloney - Cross

1 Q. Do you see that there is an attachment?

2 A. Yes.

3 Q. If you go to 121, sir, I will represent to you that this is
4 the attachment that was produced out of the Kreindler &
5 Kreindler system.

6 MS. KIRSCH: I don't want to interrupt Mr. Shen's
7 questioning so I will just put a standing objection that this
8 witness was not involved in any of this correspondence, as
9 these documents show. The witnesses who were involved are
10 here; they can testify as to this whole process. And I think
11 that this is inappropriate. There is more than just the
12 documents that Mr. Shen is showing Mr. Maloney, and if he is
13 using that to establish a fact, that's not proper. So I will
14 make my standing objection.

15 THE COURT: It is noted. It is overruled. You will
16 have an opportunity to redirect the witness.

17 BY MR. SHEN:

18 Q. Mr. Maloney, looking at Exhibit 121, you actually see the
19 redlines in that document, right?

20 A. I think the document speaks for itself. There are
21 redlines.

22 Q. In paragraph 3, there is a redline where Mr. Fawcett takes
23 out the sentence, "Until today, I had told Kreindler &
24 Kreindler that I did not know how Michael Isikoff had obtained
25 the transcript."

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Maloney - Cross

1 A. How am I supposed to know who deleted that?

2 Q. Because it's Mr. Fawcett's redline that he sent back.

3 A. I don't know that.

4 Q. Let me make sure I understand your testimony, sir.

5 Looking at this e-mail chain that Mr. Fawcett is
6 sending back to Mr. Pounian with his redlines and saying how
7 about this, you cannot deduce that these are Mr. Fawcett's
8 actual redlines?

9 A. Mr. Shen, seriously, you have prepared dozens, if not
10 hundreds of declarations and affidavits, and I am sure there
11 has been back and forth between you and the declarant.

12 Q. Would you answer the question, please?

13 A. I can't answer that question. I told you I can't answer
14 that question. I was not involved in it.

15 THE COURT: Mr. Maloney does not understand what
16 happened with this declaration, and he can't answer any
17 questions about who was involved in its drafting or editing.

18 Q. Sir, were you aware that Mr. Fawcett was willing to submit
19 a declaration admitting to his breach of the protective order,
20 but he wasn't willing to say that he had told the Kreindler
21 firm that he did not know how Michael Isikoff got the
22 transcript? Did you know that?

23 A. I knew the first part. I didn't know the second part. I
24 knew that he was willing to issue a declaration saying that he
25 was the one who transmitted the transcript.

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Maloney - Cross

1 Q. You didn't know the second part?

2 A. The second part, where he deleted this line in the
3 declaration, which I have never seen, I did not know.

4 Q. Sir, the truth is, you never asked Mr. Fawcett whether he
5 sent the transcript to Mr. Isikoff, right?

6 A. That is not correct.

7 MS. KIRSCH: Objection. Asked and answered.

8 Q. You never asked Mr. Kreindler either?

9 A. I answered that question five times between yesterday and
10 today.

11 THE COURT: Mr. Shen, move on, please.

12 Q. Sir, go back to your declaration, Exhibit 56F. We are
13 looking at paragraph 6.

14 Paragraph 6 of the declaration --

15 A. Hold on. 56F?

16 Q. Yes.

17 This describes the cloud-based server?

18 A. This is Mr. Hartney's declaration?

19 Q. Mr. Hartney's declaration. It describes the cloud-based
20 server?

21 A. Yes.

22 Q. Mr. Hartney says, "On July 29, 2021, I reviewed the user
23 history of that cloud-based server," right?

24 A. What paragraph?

25 Q. Paragraph 6.

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Maloney - Cross

1 A. Yes.

2 Q. And that was the first time that Mr. Hartney reviewed the
3 cloud-based server, right?

4 A. I don't know, but I asked him to do that. I asked him to
5 look at the cloud-based server so we can determine if any of
6 our consultants accessed the Jarrah transcript.

7 Q. Let's just establish a timeline here. If we can look at
8 Exhibit 93.

9 It's going to be on your screen, Mr. Maloney.

10 93 is July 29, an e-mail from you to Mr. Hartney?

11 A. Yes.

12 Q. At the bottom you asked him to look at the file share
13 server, right?

14 A. Yes.

15 Q. And who had access?

16 A. Yes.

17 Q. So, this is a July 29th e-mail. That's the first time you
18 asked Mr. Hartney to look at this?

19 A. I don't know if this is the first time. I didn't have the
20 answers at this point in time, so I asked him to prioritize
21 this with some urgency. It may be that I asked him prior to
22 this and this was a reminder. You can see here, on the very
23 first line, I was asking him to make this a high priority.

24 Q. But certainly, as of July 29, you didn't have answers as to
25 who had access to the cloud-based server?

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Maloney - Cross

1 A. I did not have a full understanding at that point.

2 Q. But you are aware that Saudi Arabia filed a letter with the
3 court -- I will represent to you it's on July 23 -- in which
4 Saudi Arabia asked for certain discovery relating to the leak?

5 A. I don't remember the date, but I remember them doing that,
6 yes.

7 Q. If you can look at Exhibit 43, please. This is PEC's
8 letter to the court responding to Saudi Arabia's letter.

9 Just before we put it on the screen, I think we
10 confirmed that this is a public document.

11 MR. RAPAWY: We discussed this with the PECs when we
12 were talking about redactions, and they did not request any
13 redactions to this document.

14 THE COURT: Thank you.

15 MR. SHEN: Let's display the document, please.

16 BY MR. SHEN:

17 Q. Sir, this is a letter that the PECs put in. If you go to
18 the last page, you will see your signature block?

19 A. Yes.

20 Q. You certainly reviewed this document before it went in
21 under your signature block?

22 A. Yes.

23 Q. If we cull out the language before Saudi Arabia filed its
24 motion, it says, "Plaintiffs advised Saudi Arabia that each of
25 the lead PEC firms had already conducted internal

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1 investigations into the handling of the Jarrah transcript and
2 communications with Mr. Isikoff and that as a result of those
3 investigations, the lead PEC firms was confident that it was
4 not the source of the leak to Mr. Isikoff."

5 Do you see that language?

6 A. Yes.

7 Q. Now, you didn't tell the court that the Kreindler firm had
8 multiple contacts with Mr. Isikoff, right?

9 A. No. The question was if we had discovered that the
10 transcript had been sent from Kreindler to Mr. Isikoff. That
11 was the focus -- the initial focus of the investigation was on
12 just that.

13 Q. Did you make the decision not to disclose those multiple
14 contacts to the court?

15 A. The status -- the question for the investigation was
16 whether or not anybody at Kreindler sent him the transcript,
17 sent Mr. Isikoff the transcript, not whether or not anybody had
18 ever spoken to Mr. Isikoff.

19 Q. I am just asking who made the decision not to disclose that
20 report?

21 A. I don't know. It was not directly relevant.

22 Q. You didn't tell the court that, in the course of your
23 investigation, no personal devices, no personal e-mails were
24 searched, correct?

25 A. No. Again, first of all, I didn't do that, as we have

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Maloney - Cross

1 already discussed. And no, it wasn't directly relevant.

2 Q. You didn't tell the court that every single person at the
3 Kreindler firm had access to the transcript, and you had no
4 idea who actually looked at it or accessed it, right?

5 A. Well, we didn't tell the court a lot of things that were
6 not directly relevant to the question, which was who sent the
7 transcript to Mr. Isikoff.

8 Q. You don't think that's relevant to the question of what the
9 already conducted internal investigation is?

10 A. No. What was most relevant in the first week or two was to
11 determine whether or not the Jarrah transcript, which had very
12 limited access at our firm, had been e-mailed to anybody --
13 initially just to Mr. Isikoff, and then had a subsequent search
14 on any movement of that transcript.

15 Q. Now, at this point in time, July 27, you had done no
16 investigation at all on the cloud-based server either, which
17 held the Jarrah transcript?

18 A. I can't tell you, as I indicated a few minutes ago, if Mr.
19 Hartney had already been doing that. But I can tell you, as of
20 the e-mail we just covered, I did not know the answers to that
21 search.

22 Q. So, at the time that you wrote this letter, when you told
23 the court that you had already conducted your investigation,
24 you actually didn't know who had access at all to the
25 cloud-based server and the Jarrah transcript on the server?

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Maloney - Cross

1 A. That's not correct.

2 Q. You don't know who accessed it?

3 A. We do.

4 Q. You just told me on July 27 that you didn't have the
5 answers?

6 A. You put it in the present tense. I am telling you right
7 after that e-mail, I did look at the cloud-based platform and
8 nobody accessed the Jarrah transcript.

9 Q. That was on July 29, right?

10 A. Let me back up for a second. The cloud-based platform is
11 for consultants that had signed protective order. They were
12 authorized to see it. And I wanted to know if anybody actually
13 accessed it. I got that answer, and the answer was negative.

14 Q. The question I am asking you, Mr. Maloney, is at the time
15 that the Kreindler firm submitted this letter to the court, it
16 didn't know the results of the investigation on the cloud-based
17 server, right?

18 A. I did not personally know the results.

19 Q. And all you had done is ask Mr. Hartney to do the two
20 e-mail searches that we have already discussed, right, at this
21 time?

22 A. Yeah. Right.

23 Q. Now, you're aware that on July 29, other members of the
24 PEC, the Cozen O'Connor firm and the Motley Rice firm, they
25 voluntarily submitted full declarations, those declarations

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Maloney - Cross

1 came from anyone who had access to the transcript, and from
2 their IT director describing the search that was conducted?

3 A. Yes. Two of those plaintiffs' firms of many had accessed
4 the transcript. I don't remember the date, but you say July
5 29.

6 Q. Who at the Kreindler firm decided at that point in time
7 that it wasn't a good idea to submit declarations to the court?

8 A. I don't know if it was any one person. We generally do
9 things by consensus and the consensus was we would wait to see
10 what the court asked us to do.

11 Q. So it was a consensus decision among all of the lawyers at
12 the Kreindler firm?

13 A. Correct. I think we had a meet-and-confer with your firm.
14 There was some disagreement. And we decided to wait until we
15 got instructions from the court.

16 Q. Now, as of July 29, when the other PEC firms had submitted
17 full and forthcoming declarations, were any declarations
18 drafted for Mr. Fawcett as to that date?

19 A. I don't recall.

20 Q. Were any declarations drafted for Mr. Kreindler?

21 A. Not by me, so I don't know.

22 Q. When is the first time that the Kreindler firm drafted a
23 declaration for Mr. Fawcett?

24 A. I don't know because I wasn't involved in that. But I know
25 that there was one that was done on September 27.

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Maloney - Cross

1 Q. But you don't know when the first draft was presented to
2 him?

3 A. I do not.

4 Q. Do you know if a draft was presented to him that said, I,
5 Mr. Fawcett, did not send the transcript to Mr. Isikoff, and I
6 have no idea who did?

7 A. Mr. Shen, I don't know how many times I can tell you. I
8 was not involved in drafting Mr. Fawcett's declaration at any
9 time.

10 Q. So, after this letter to the court on July 27, where you
11 say that the investigation is done and you're confident that
12 the Kreindler firm isn't the source of the leak, you weren't
13 involved after that?

14 A. No, I stayed involved. We had additional search terms. We
15 continued to do more searches.

16 Q. You were involved in the search, but you weren't involved
17 in the preparation of the declarations?

18 A. I was involved in the preparation of my own declaration,
19 and I thought maybe we might need one from John Hartney at some
20 point, so I started to think about that. But that was it. I
21 did not prepare declarations for anybody else.

22 Q. Let's look at Exhibit 49, please.

23 Exhibit 49 is the August 30, 2021 order from the
24 court.

25 Now, just to put this in context, the Kreindler firm

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Maloney - Cross

1 had submitted declarations to the court on August 16, and the
2 court ordered the Kreindler firm to submit additional
3 information in declarations, correct?

4 A. Yes.

5 Q. And the court orders the four attorneys at Kreindler --
6 yourself, Mr. Pounian, Ms. Benett and Mr. Kreindler -- to
7 identify all communications with Michael Isikoff, or anyone
8 acting on his behalf, whether oral or written. Do you see
9 that?

10 A. Yes.

11 Q. Now, at that point in time, did you ask anybody, we need
12 all of your text messages, we need all of your personal
13 e-mails, the court's order said all communications?

14 A. We may have. I don't remember at this point if we
15 collected the cell phone data, but we did ask everybody if they
16 had any communications.

17 Q. Did you collect it or not?

18 A. On August 30? Sometime in September we did.

19 Q. After August 30, before the September 27 declarations that
20 went in, did you collect it, or was it after Ms. Kirsch got
21 involved?

22 A. I know after Ms. Kirsch got involved, they were collected.
23 Before that, I think everybody was asked to determine whether
24 or not there was any messages, cell phone or personal or
25 anything to Mr. Isikoff.

LB289111

Maloney - Cross

1 Q. Did you go through and look at the call logs from the firm?

2 A. No. It wouldn't have shown me anything.

3 Q. Did you ask anyone for them?

4 A. No.

5 Q. Did you ask to see, well, let's see how many calls Mr.

6 Kreindler had with Mr. Isikoff?

7 A. No.

8 Q. You are aware that that information is available, right?

9 A. On the firm's -- sure, any time you make a phone call,
10 there is a recording of it. It has been the subject of our
11 9/11 case.

12 Q. It was produced to us this week by your counsel. But you
13 never looked at it as part of your investigation?

14 A. No.

15 Q. You never looked at in preparation for preparing
16 declarations that the court ordered after you had submitted the
17 initial declarations?

18 A. Each of us were instructed to go back and determine whether
19 or not any of us, anybody at the firm, had any communications
20 with Mr. Isikoff.

21 Q. Let's look at the second page of the court's order.

22 The court orders the declaration from the head of the
23 firm's information technical group. And it says that that
24 declaration should demonstrate that a forensic analysis was
25 done to identify who accessed the deposition transcripts and

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Maloney - Cross

1 determine the dates of any access.

2 Do you see that?

3 A. Yes.

4 Q. Now, you knew at the time that that was impossible to do
5 from the Case Media server, right?

6 A. No, I don't agree with that. He did a forensic analysis to
7 determine if anybody transmitted the Jarrah transcript to
8 anybody outside the firm.

9 Q. That's not the question.

10 A. It's part of the question, it is.

11 Q. The court's order says do a forensic analysis to determine
12 who accessed the transcript; not who sent the transcript, who
13 accessed the transcript. You see that, right?

14 A. I see that.

15 Q. You knew at the time that that was impossible to do, based
16 on the technology you were using?

17 A. Well, from Case Media, we have already covered you can't
18 tell the date that somebody looked at a document, but you can
19 tell if it was sent.

20 Q. You can't tell who accessed it, right?

21 A. True.

22 Q. So this is a problem for the Kreindler firm, right?

23 A. I don't know that I would call it a problem. The law firm
24 that's working on the 9/11 case is permitted to have access to
25 the documents. Nobody at the firm outside of the terror team

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Maloney - Cross

1 had permission to access the documents, and to my knowledge, no
2 one ever did, nor would they know how to find it.

3 Q. Sir, did anyone who submitted declarations on September
4 27th tell the court that it was impossible to do the forensic
5 analysis that the court required?

6 A. There was a forensic analysis done. If your quibble is it
7 wasn't good enough, we can debate that.

8 Q. It's not a quibble. I am asking you if anyone told the
9 court that you could not do an analysis to determine who
10 accessed the deposition transcripts?

11 A. No. We told the court we did a forensic analysis of who,
12 if anyone, sent the transcript outside the firm.

13 Q. Who made the decision on the Kreindler side not to tell the
14 court that they couldn't do the analysis that the court ordered
15 on August 30?

16 A. I don't recall there was ever a decision made about that
17 one way or the other. We wanted to answer the court as fully
18 as we could who, if anyone, sent that transcript to anyone.

19 Q. It was a consensus decision among the partners?

20 A. Probably. But I don't recall that specific conversation
21 taking place. We wanted to inform the court everything we knew
22 about whether or not that transcript came from our firm,
23 Kreindler & Kreindler, to Mr. Isikoff or Yahoo! News. And then
24 we did a subsequent search to determine if it was ever e-mailed
25 anywhere to anybody.

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Maloney - Cross

1 Q. After this August 30 order, do you know when the first time
2 that Mr. Fawcett was presented with the declaration?

3 A. I don't know. All I know is it was on September 27, he was
4 asked to sign a declaration. My understanding is he couldn't
5 sign the declaration because he admitted on that day that he is
6 the person who transmitted the transcript.

7 Q. Did you learn at some point in time that Mr. Fawcett was
8 represented by counsel Liz Crotty?

9 A. I don't know that to ever be the case.

10 Q. Sitting here today that's the first time you have heard
11 that?

12 A. You're telling me he was represented by Ms. Crotty?

13 Q. I am asking, is this the first time that you have heard
14 that?

15 A. I am hearing it from you that he is represented by Ms.
16 Crotty. That's the first time I heard that. I don't know that
17 he was ever represented. Are you representing that he was
18 represented by Ms. Crotty or not?

19 Q. All I know is that there were communications with Ms.
20 Crotty that were marked as attorney-client privilege.

21 A. Do you know who Ms. Crotty is?

22 Q. I know who Mr. Crotty is.

23 A. You know she worked at our firm on this case and that she
24 has remained friends with all of us at the firm? Do you know
25 she was running for assistant district attorney?

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Maloney - Cross

1 THE COURT: Mr. Maloney, you are not asking the
2 questions.

3 THE WITNESS: He is asking me if I know, and I said I
4 don't know.

5 Q. Let me ask a new question. Did you know that Mr. Fawcett
6 was consulting with Ms. Crotty around the issues of the leak of
7 the transcript?

8 A. I have no knowledge of that.

9 Q. This is the first time you have heard that?

10 A. Yes.

11 Q. Sir, your testimony is that on September 27, you learned
12 for the first time that Mr. Fawcett was the source of the leak?

13 A. Yes.

14 Q. Who told you?

15 A. I assume I can testify to hearsay, but --

16 Q. I am just asking who told you.

17 A. Megan Benett.

18 Q. Was that in a phone call or over an e-mail?

19 A. Phone call.

20 Q. What was your reaction?

21 A. Stunned, sad, angry.

22 Q. Did you call Mr. Fawcett?

23 A. No.

24 Q. Did you talk to him about the leak ever?

25 A. No, I have never spoken to him since that day, even a few

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Maloney - Cross

1 days leading up to that.

2 Q. At that point he was persona non grata?

3 A. You want me to characterize why I didn't call him? I knew
4 that there was now a separation between us. No, I wouldn't say
5 persona non grata. He made a very bad mistake. I haven't
6 spoken to him since then.

7 Q. So after you learned that Mr. Fawcett had leaked the
8 transcript, did you do an investigation to determine whether
9 anyone at the Kreindler firm knew about the leak?

10 A. I had done that investigation already, and I again asked
11 everybody afterwards if -- and they all said this is the first
12 time they were aware of it on the 27th. So the answer is yes.

13 (Continued on next page)

LB2H9112

Maloney - Cross

1 Q. All right. What you're saying is that you asked everybody
2 afterwards whether they were aware of it?

3 A. Yes.

4 Q. All right.

5 A. I had already asked that multiple times in the two months
6 prior as well, but yes. When now -- when the revelation now
7 came out on the 27th, we had a conversation, and everybody was
8 just as shocked as I was.

9 Q. Did you ask for emails?

10 A. Emails of what?

11 Q. Did you do any email searches?

12 A. For what?

13 Q. To determine whether anyone had knowledge of the leak.

14 A. We covered that. For two months --

15 Q. After September 27 did you do any additional email
16 searches?

17 A. No.

18 Q. All right. After September 27 did you ask at that point
19 for any personal devices or personal emails?

20 A. No, Mr. Shen. There's a good reason for that. I did not.

21 Q. After that point, September 27, you knew that Mr. Fawcett
22 had leaked the transcript from his personal computer. Did the
23 firm demand that he return that personal computer?

24 A. Yes.

25 Q. When?

LB2H9112

Maloney - Cross

1 A. I think that he was sent a letter, if I recall -- actually,
2 the Court asked for the computer, and we sent a letter to him
3 to make sure that the computer was either delivered to us or to
4 the Court because we --

5 Q. But it was only after the Court issued an order, correct?

6 A. I think it was within a couple of days of that. I don't
7 remember the date, but it was literally the same week, I think.

8 Q. It was after the Court issued the order?

9 A. Probably, but I don't remember. I know that -- I know that
10 once we'd found out what he had done that we knew that we
11 should no longer speak to him, and we had to, you know, make
12 sure that he no longer had access to our server and system.
13 You got to -- you got to understand, the first two days we're
14 trying to figure out what had just happened. The Court's order
15 came in about the laptop, and we advised Mr. Fawcett he needed
16 to turn over the laptop. And we wanted to make it as
17 expeditious as possible, either have him deliver it right to
18 the court or give it to us, and we'd deliver it to the court.

19 Q. Did you at that point, after September 27, search through
20 in phone logs at the firm?

21 A. No.

22 MR. SHEN: I have no further questions. Thank you,
23 Mr. Maloney.

24 THE COURT: Ms. Kirsch, are you ready, or do you need
25 a minute?

LB2H9112

Maloney - Redirect

1 MS. KIRSCH: I would like a minute, your Honor.

2 THE COURT: Let's take a quick recess, two or three
3 minutes, please.

4 (Recess)

5 MS. KIRSCH: Thank you, your Honor.

6 REDIRECT EXAMINATION

7 BY MS. KIRSCH:

8 Q. Good morning, Mr. Maloney.

9 A. Good morning.

10 Q. When did you join the Kreindler firm?

11 A. June of 1994.

12 Q. Have you been working there ever since?

13 A. Yes.

14 Q. When did you first meet Jim Kreindler?

15 A. Probably spring of 1994.

16 Q. What about Ms. Benett? When did you first meet Ms. Benett?

17 A. I don't remember the year. When she was interviewing with
18 the firm and started working with the firm, that was the first
19 time we met. I don't remember the year she started. Been
20 there so long, time compresses. I really don't remember the
21 year.

22 Q. That's OK.

23 Does 2006 sound about right?

24 A. Yeah.

25 Q. What about Mr. Pounian? When did you first meet

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Maloney - Redirect

1 Mr. Pounian?

2 A. Spring of 1994.

3 Q. '94.

4 What about John Fawcett? When did you first meet John
5 Fawcett?

6 A. I think either late 2001 or early 2002. It was after 9/11.
7 Obviously, he came in to start working on the case. So
8 certainly by early 2002, maybe even earlier, but after 9/11.

9 Q. You've been working continuously with each of those people
10 since the time that you first met each one of them?

11 A. Yes.

12 Q. Can you describe a little bit about what the working
13 relationship is with that group, that you have with that group.

14 A. Well, Mr. Fawcett, it was primarily on 9/11. There were
15 some other matters or some other terrorism cases or some other
16 non-9/11 matters that I worked with him on as well, but it was
17 primarily 9/11.

18 Do you want me to describe the day to day over the
19 last 20 years? I'm not sure. I can come back to that.

20 But with Ms. Benett, it was more, and Mr. Pounian, it
21 was more ad hoc. Mr. Pounian, probably not for many years.
22 There was a time where he was a partner, then of counsel, and
23 then came back. So I didn't have a lot of work with
24 Mr. Pounian directly until probably 2015, as it relates to
25 9/11.

LB2H9112

Maloney - Redirect

1 And with Ms. Benett, you know, I worked with her on a
2 variety of matters at the firm, including the terror case. So
3 there was -- it was definitely more varied with Ms. Benett.
4 She has a general practice; I also have a general practice.

5 Q. Focusing, then, on the 9/11 case, can you just describe how
6 often you all communicate, what the collaborative working
7 process is like. Just give us a little sense of how that
8 works.

9 A. So I would probably focus the time frame from, say, 2016
10 when JASTA was passed to current, because that's been a much
11 more intense time period, and that's the part that focused on
12 the case against the Kingdom of Saudi Arabia. From that point
13 on, from 2016 to today, it's been a regular interaction, almost
14 on a daily basis.

15 Q. And has any of the individuals that I've just mentioned,
16 have any of them ever lied to you before?

17 A. No, not to my knowledge.

18 Q. Do you have any reason to suspect that any of those
19 individuals have ever lied to you before?

20 A. Nope. You come to know people after 20 years of working
21 with them, or 15 years. You have a good relationship. And,
22 you know, their integrity is something that would certainly be
23 supported by all the work they've done and all the interactions
24 I've had, and I had no reason to think that anybody would lie
25 to me at the firm.

LB2H9112

Maloney - Redirect

1 Q. So has Mr. Kreindler -- let's just be specific --

2 Mr. Kreindler ever lied to you in all of the years you've known
3 him?

4 A. No, certainly not that I'm aware.

5 Q. Have you ever been aware that Ms. Benett has lied to you in
6 all the years you've known her?

7 A. Never.

8 Q. Have you ever been aware that Mr. Pounian had lied to you
9 in all of the years that you've known him?

10 A. No.

11 Q. Prior to this one incident about the leak, had you ever
12 been aware that Mr. Fawcett had lied to you?

13 A. Never.

14 Q. How many partners are there, roughly, at the Kreindler
15 firm?

16 A. Somewhere around ten. It's approximately eight to ten, I
17 think. I can sit here and count them, if you'd like.

18 Q. Is it a reasonably close partnership?

19 A. Yes. We have one partner in Boston. The rest are in
20 New York. There was a time we had two partners in Los Angeles,
21 but they're no longer part of the firm. Everybody else is in
22 New York.

23 Q. So if we go back, can you just recall when you first heard
24 about the leak that led to Mr. Isikoff's article?

25 A. When I read the article on July 15.

LB2H9112

Maloney - Redirect

1 Q. Do you remember how you learned of it?

2 A. We get forwarded news articles having to do with the 9/11
3 litigation by our PR group that essentially tracks stuff, and I
4 think the Isikoff article was sent to all of us. I know that I
5 got it. Pretty sure that's the source I got it from. And I
6 don't think it was the only article that was attached, but I
7 don't recall for sure, but I opened it and read it that day.

8 Q. What was your reaction?

9 A. I was very surprised, particularly the last sentence where
10 Mr. Isikoff says he had a copy of the redacted transcript. And
11 I knew immediately for him to have that, somebody had to leak
12 it and that that was a violation of the protective order. So I
13 recognized immediately that was a serious issue.

14 Q. If we could use the smaller binder that's up there, it has
15 a cover sheet that says "Kreindler & Kreindler."

16 A. I only have the massive --

17 THE COURT: I have the Kingdom's binder.

18 A. -- binder from Mr. Shen.

19 MS. FREY: Your Honor, may I approach?

20 Q. OK. Mr. Maloney, can you take a look at tab 1, please.

21 A. Got it.

22 Q. Can you identify this document?

23 A. Appears to be a text message from me to John Fawcett, Megan
24 Benett, Steve Pounian. I can't tell if there's other names on
25 there, but those names appear in the chat participants.

LB2H9112

Maloney - Redirect

1 MS. KIRSCH: I'd like to move this document into
2 evidence.

3 THE COURT: Accepted. It's accepted.

4 MS. KIRSCH: Oh, thanks.

5 (Kreindler Exhibit 1 received in evidence)

6 BY MS. KIRSCH:

7 Q. Mr. Maloney, what is the text that you're sending around to
8 the group?

9 A. So this is on July 15. The time, I think, is UTC time, so
10 it's sometime in the afternoon on July 15. After I'd read the
11 Isikoff article, I texted the group because not everybody was
12 in the office, and I said, can we have a call this afternoon to
13 discuss the Yahoo! -- or discuss Yahoo! That's the article
14 that Mr. Isikoff wrote that came out that day.

15 Q. Do you recall whether that call took place?

16 A. I believe it did.

17 Q. What was discussed on that call?

18 A. Whether anybody knew anything about how Mr. Isikoff had got
19 the transcript, whether anybody at Kreindler had sent the
20 transcript to him or told Mr. Isikoff about the Jarrah
21 deposition, the substance of the Jarrah deposition.

22 Q. What was the takeaway from the call?

23 A. That no one had. No one had sent him the transcript and no
24 one knew how he got it.

25 Q. Was it right after this call that you undertook to lead up

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Maloney - Redirect

1 an investigation?

2 A. Yes.

3 Q. And why did you lead an investigation if everyone said that
4 they did not leak it?

5 A. It's the old Ronald Reagan phrase, "trust but verify." I
6 trusted everybody in the office and on that call, but I wanted
7 to verify. I assumed at some point we might be asked whether
8 or not we had done anything to confirm it. So the following
9 day, I asked our head of IT, John Hartney, to begin a search of
10 all the emails of people that had access to the transcript.

11 Q. Before that discussion with Mr. Hartney, did you have a
12 face-to-face conversation with any of the members of the terror
13 team about this issue?

14 A. Yeah. I believe I spoke face-to-face with Mr. Fawcett that
15 same day, July 15. If it wasn't July 15, it would have been
16 July 16. But he was in the office that day and I was in the
17 office that day. I went into the place where he sits and asked
18 him directly about whether or not he had sent this transcript
19 to Mr. Isikoff or if he knew anything about it, and he told me
20 he did not.

21 Q. Did you speak with anyone else personally on that first
22 day?

23 A. On that phone call. It was the same day.

24 Q. OK.

25 A. That phone call also included Mr. Fawcett, but it also

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Maloney - Redirect

1 included Ms. Benett, Mr. Pounian. I thought Jim Kreindler was
2 also on the call, but I don't see his name here. So I can't --
3 I can't verify that, but I'm pretty sure Jim got on a call with
4 us.

5 Q. Can you take a look at tab 2, please.

6 A. Yep.

7 Q. Can you identify this document?

8 A. It's an email chain. So the first email is -- it looks
9 like it's from me at the bottom there, July 21, to Mr. Hartney:
10 "Any questions?"

11 And then this is in relation to the search he was
12 performing. He sent me an email back later that day saying
13 that he performed a search on Lisa, that's Lisa Ranieri, she's
14 a secretary, I think Ms. Benett's secretary; Deb, Debby Pagan
15 who's a paralegal on the 9/11 case; Jim Kreindler; John
16 Fawcett; Steve Pounian; and my, which here denotes me.

17 And said: I got a good number of results. Do you
18 plan coming into the office so we can go over it or discuss it
19 on the phone? I did not see any emails going out of anyone
20 email box with that particular transcript. I tried calling
21 Mr. Hartney. I must not have been in the office that day, and
22 he said he would call me back.

23 MS. KIRSCH: I'd like to offer this into evidence,
24 please.

25 THE COURT: It's accepted.

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Maloney - Redirect

1 (Kreindler Exhibit 2 received in evidence)

2 THE COURT: I think there's no objection to the
3 admission of any of the exhibits, is that correct?

4 MS. KIRSCH: We would have objection to some of the
5 documents that previously were not moved into evidence, I
6 believe.

7 THE COURT: My understanding is that the parties were
8 submitting these exhibits and that they were being admitted.

9 MS. KIRSCH: No, your Honor. That was one of the
10 reasons that the Kreindler firm had asked for an exchange of
11 exhibits ahead of time, so that we could look at them and see
12 whether we did, in fact, have objections. We do have objection
13 to a number of the documents in the binder. We would not
14 stipulate to admit that entire binder into evidence, absolutely
15 not.

16 THE COURT: All right. Well, I think on a
17 going-forward basis, then, you need to raise any objections.
18 And to the extent there are objections to be raised for
19 documents that were presented during the course of prior
20 examinations, then we'll have to deal with those objections
21 after the fact during the post-hearing briefing.

22 MS. KIRSCH: Your Honor, there were many documents
23 that were just thrown up on the screen with no foundation laid
24 of any sort. I don't -- if it was aiding in the testimony,
25 there was no motion to get them into evidence, I would have

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Maloney - Redirect

1 raised the objection on a step-by-step basis. Are we supposed
2 to be briefing all of that? I had no idea that there was an
3 idea that they would be trying to move them into evidence.

4 THE COURT: What's the foundation objection generally?
5 Aren't the majority of these documents documents that your firm
6 produced in the course of discovery?

7 MS. KIRSCH: Well, I will have objections to
8 questioning Mr. Maloney about a document that he's actually
9 never seen before, even if that document may have come. If
10 they want to get it in through one of the witnesses that can
11 lay a foundation and talk intelligently about it, that would be
12 a different matter.

13 THE COURT: All right. I'm not quite sure that
14 foundational objections are going to be well placed given that
15 the volume of the documents are either documents submitted in
16 court, either issued by the court or submitted to the court or
17 documents that were produced by the Kreindler firm as part of
18 the investigation here, but I guess maybe we'll address this at
19 a recess at some point. So why don't you proceed.

20 BY MS. KIRSCH:

21 Q. Mr. Maloney, looking at document No. 2, do you recall
22 whether you did have a conversation with Mr. Hartney after this
23 original exchange?

24 A. I don't recall, but I most likely did.

25 Q. Do you have a recollection of having a conversation to go

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Maloney - Redirect

1 over this good number of results that Mr. Hartney's search
2 turned back?

3 A. Yeah.

4 Q. Do you have any recollection of what that discussion --

5 A. Yeah.

6 Q. -- sum and substance?

7 A. Yeah, the results, at least at this point in time, were
8 not -- they weren't indicative of the Jarrah transcript or the
9 Jarrah deposition. And then probably sometime that same week,
10 as I see this is July 21, I think by July -- between July 22
11 and 29th, I'd learn about the three emails that we covered on
12 cross-examination between Jim and Mr. Isikoff and the one from
13 John Fawcett forwarding the privilege log.

14 Q. Can you take a look tab No. 3, please.

15 A. Yep.

16 Q. Can you identify that document?

17 A. It's an email from me on July 21 to Jim Kreindler, Steve
18 Pounian, Megan Benett, and the subject line is "Jarrah."

19 MS. KIRSCH: I'd move this into evidence.

20 THE COURT: Any objection?

21 MR. SHEN: No objection.

22 THE COURT: Accepted.

23 (Kreindler Exhibit 3 received in evidence)

24 BY MS. KIRSCH:

25 Q. Mr. Maloney, can you just sort of explain to me what the

LB2H9112

Maloney - Redirect

1 purpose of this email to your partners is?

2 A. Yeah. This is me informing my partners that I had asked
3 John Hartney to search the outgoing email boxes of the
4 Kreindler 9/11 team from the date we received the transcript on
5 June 28 to see if anybody had sent the transcript to anyone
6 outside the firm, and I asked them to look specifically at Jim,
7 myself -- your Honor, I'm known as Duke -- Steve, as in
8 Pounian, John Fawcett, Megan Benett, Julia Sienski, Deb Pagan,
9 Lisa Ranieri, and Izabela.

10 Q. Would you take a look at tab 4, please.

11 Do you recognize this document or recognize what it
12 is?

13 A. Yeah. I mean, I've only seen it recently. It appears to
14 be a text message from -- let me see who it's from. Yeah, it's
15 a text message from me to John Hartney on July 22.

16 MS. KIRSCH: OK. I move this into evidence, please.

17 THE COURT: Any objection?

18 MR. SHEN: No objection.

19 THE COURT: It's accepted.

20 (Kreindler Exhibit 4 received in evidence)

21 BY MS. KIRSCH:

22 Q. Can you explain to me, please, what's going on in this text
23 message.

24 A. Yeah. It's me telling John Hartney that Saudis made a
25 motion requesting information. They made a motion to the

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Maloney - Redirect

1 Court. Prior to that, there had been, I think, a letter to us
2 or a meet-and-confer concerning the Jarrah leak, and I told --
3 I was updating Mr. Hartney about the fact that they'd made a
4 motion. And I was trying to convey to him this is, obviously,
5 very important, and it should be top of your to-do list.
6 Finish the second search of Mr. Isikoff as soon as possible.
7 Let me know the results by tomorrow.

8 The second search, I think, was broader than the first
9 one, and I believe I asked him to determine whether or not the
10 Jarrah transcript had been emailed to anyone. The first search
11 he had done was a little bit more narrow. It was on searching
12 whether or not anybody had sent it to Mr. Isikoff or Yahoo!
13 News. I had added some more. I had him do another search,
14 another sweep, and this time to determine if there was an email
15 to anybody outside of the Kreindler firm.

16 Q. And was that normal in the course of this investigation
17 that you would go back to Mr. Hartney for additional searches,
18 terms, changing the breadth?

19 A. Yeah, I did it several times over the next several weeks.

20 Q. Can you take a look tab No. 5, please.

21 A. Yes.

22 Q. Can you identify this document?

23 A. It looks like -- this looks like a text from John Hartney.
24 Is it from him? Yeah, it's from John Hartney. It's unclear to
25 me if this is a text to me. I don't see my number, so I don't

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Maloney - Redirect

1 know if he's sending this to me or not. I assume he was, but
2 it appears to be a text from John Hartney on July 22.

3 MS. KIRSCH: I'll move this into evidence.

4 THE COURT: Any objection?

5 MR. SHEN: No objection.

6 THE COURT: Admitted.

7 (Kreindler Exhibit 5 received in evidence)

8 THE WITNESS: And this is when Mr. Hartney is telling
9 me he did find an email communication with Jim and Mr. Isikoff
10 discussing the gag order.

11 BY MS. KIRSCH:

12 Q. What was your reaction to that information?

13 A. I think I followed up with Mr. Hartney, and I said, was
14 there anything there regarding the Jarrah deposition? And he
15 told me no, and I asked to see all the emails, I don't know,
16 the same day or within a day or two so I could review them
17 myself.

18 Q. Why don't you take a look at tab No. 8, please.

19 A. OK.

20 Q. Do you recognize this?

21 A. Yeah. Looks like an email chain. This is John Hartney
22 sending me on July 22 -- he forwarded me the email. This is
23 the next day from that text we just covered, exactly what I was
24 recalling. That he sent me copies of the emails between
25 Mr. Kreindler and Mr. Isikoff.

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Maloney - Redirect

1 MS. KIRSCH: I'll move this tab 8 into evidence.

2 MR. SHEN: No objection.

3 THE COURT: Thank you. It's accepted.

4 (Kreindler Exhibit 8 received in evidence)

5 BY MS. KIRSCH:

6 Q. Mr. Maloney, what was your reaction, if any, when you saw
7 this email as part of your investigation?

8 A. Well, my initial reaction was, OK, he didn't mention Jarrah
9 at all in the email communication and there's no attachment, so
10 he didn't forward the transcript. I still had some questions,
11 and so I asked Mr. Kreindler about it.

12 Q. What was the sum and substance of this discussion with
13 Mr. Kreindler?

14 A. I said, Did you speak to Mr. Isikoff about the Jarrah
15 deposition? And he said no.

16 Q. Can you take a look tab No. 9. Can you identify this
17 document for me.

18 A. It looks like a Zoom invite email chain forwarded to me
19 from John Hartney. This would be yet another one of the emails
20 that Mr. Hartney found between Jim Kreindler and Mike Isikoff,
21 and this one is an invitation to a Zoom -- I guess a podcast or
22 a Zoom meeting with Jim and Ali Soufan.

23 MS. KIRSCH: I'll move this document into evidence.

24 MR. SHEN: No objection.

25 THE COURT: Accepted.

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Maloney - Redirect

1 (Kreindler Exhibit 9 received in evidence)

2 THE WITNESS: I should point out, I was asked about if
3 I knew about this on cross-examination. There's no indication
4 that I saw here about Catherine Hunt's involvement, so I
5 learned about that from Mr. Shen during cross.

6 BY MS. KIRSCH:

7 Q. At the top here, when you write back to Mr. Hartney:
8 "Thank you. Is that all there is?"

9 What are you asking Mr. Hartney about?

10 A. He was sending emails to me, I guess one at a time, and I
11 wanted to make sure I had them all.

12 Q. We're going to skip ahead. I asked you after the previous
13 exhibit about your discussion with Mr. Kreindler. I just want
14 to make sure, did you discuss this email with Mr. Kreindler as
15 well in that conversation?

16 A. I believe I did. I never listened to this podcast or Zoom
17 conference. It's entitled -- I think this is the
18 *Conspiracyland* thing. And I asked him generally what it was
19 about, and I specifically asked him, did you discuss the
20 substance of the Jarrah deposition? And he told me no.

21 Q. What did Mr. Kreindler say to you, to the best your
22 recollection?

23 A. He did not discuss the substance of the Jarrah deposition.

24 Q. All right. Can you take a look tab 18. Can you identify
25 this document, please.

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Maloney - Redirect

1 A. Yeah, it's an email. The bottom portion is an email from
2 John Hartney to me on July 29. So this is -- and I forwarded
3 it eventually to -- same day I forwarded it to Jim Kreindler,
4 Jim Pounian, Megan Benett, John Fawcett, Steve Pagan. It
5 concerns the Jarrah transcript.

6 Again, as indicated earlier, I had Mr. Hartney perform
7 multiple searches of our server, and I wanted to make sure that
8 we covered all the bases. If you look at some of those prior
9 emails, there was an email address for Mr. Isikoff at a
10 Verizon.net, I think, and I asked Mr. Hartney to make sure he
11 used the word "Isikoff" to make sure that that would be
12 captured no matter what the email address was, and obviously
13 use the word "Jarrah" in the search.

14 So there was some back and forth. I wanted to make
15 sure Mr. Hartney, when he was repeating searches and expanding
16 the scope of the search, he was using the right search terms.
17 And I actually forwarded Mr. Hartney the Golkow email that
18 contained all the Jarrah transcripts. That's the rough draft,
19 I believe, the final draft, both redacted and unredacted
20 versions. Because sometimes a PDF has a code number associated
21 with it. It doesn't say "Jarrah" in the email byline. Email
22 from Golkow would say "Jarrah," but the PDF attached has serial
23 numbers sometimes, and I wanted to make sure he had that so he
24 could also plug that in as a search term so that in case
25 someone had emailed the Jarrah transcript and didn't use the

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Maloney - Redirect

1 word "Jarrah," he would find that, too. And that's what he's
2 indicating here in this email to me on July 29, that he'd
3 looked at that, and there was a serial number attached.

4 MS. KIRSCH: I'd like to move that into evidence,
5 please.

6 MR. SHEN: No objection.

7 THE COURT: Accepted.

8 (Kreindler Exhibit 18 received in evidence)

9 MS. FREY: Give the number.

10 THE COURT: I think it's tab 18.

11 MS. KIRSCH: Tab 18.

12 THE WITNESS: Yeah, it's tab 18.

13 MS. KIRSCH: Sorry, sorry.

14 THE WITNESS: And just to complete what's on this
15 document, he's telling -- Mr. Hartney's telling me the search
16 results for all the people listed there as to who sent the
17 Jarrah transcript anywhere, not just to Mr. Isikoff, but to
18 anywhere. And you can see there the very first one he caught
19 is the email that I sent to John Hartney which I just told you
20 about. The paralegal, Deb Pagan, sent it to one of our
21 cocounsel who's authorized, has access, at the Baumeister
22 Samuels firm. You can see their email extension there. I
23 think they're on the cc.

24 And John Fawcett sent it to one of our consultants.
25 The name is redacted. And then the rest was not sent to -- I

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Maloney - Redirect

1 guess Megan Benett's secretary sent it to Megan. She already
2 had it, in any event.

3 Q. Mr. Maloney, did you have a conversation with that
4 consultant who was the recipient of the transcript?

5 A. I did.

6 Q. What was the sum and substance of that conversation?

7 A. I asked him, first, did he receive the transcript. He said
8 yes. And how did he get it? He got it from John Fawcett. I
9 said, did you -- what did you do with that transcript? He
10 said, I don't -- I didn't even read it yet. I said, Did you
11 send it anywhere? He said no. I said, You know, it's
12 protected material. You can't send it anywhere. Did you send
13 it to Mike Isikoff or speak to anybody at Yahoo! News? And he
14 said no, and he said he knew that it was protected and that he
15 couldn't share it with anybody who was not authorized and that
16 Mr. Fawcett had actually reminded him of that. So I told the
17 consultant, you may be asked to submit an affidavit on that.
18 He said, no problem.

19 Q. Was that consultant aware at the time that there had been a
20 leak, to your knowledge?

21 A. I think I told him in that communication I had with him,
22 conversation, yeah. I don't know if he was aware of it before,
23 but he was aware during the phone call because I told him.

24 Q. Did you ask the consultant whether he knew anything at all
25 about how that transcript may have been leaked?

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Maloney - Redirect

1 A. I did.

2 Q. What did the consultant say to you?

3 A. He said he had no idea, and he said, It wasn't me. I
4 didn't send it anywhere. I don't know how he got it.

5 Q. Take a look tab 34. Can you identify this document for us.

6 A. It's a series of emails, an email chain between Mr. Hartney
7 and myself. So --

8 MS. KIRSCH: That's OK. I'd like to just move tab 34
9 into evidence.

10 MR. SHEN: No objection.

11 THE COURT: It's accepted.

12 (Kreindler Exhibit 34 received in evidence)

13 BY MS. KIRSCH:

14 Q. Can you tell us what's going on in this email exchange,
15 Mr. Maloney.

16 A. Yeah. I started out on August 30 -- at that point we knew
17 we had to get a declaration from Mr. Hartney as the head of our
18 IT, and so I drafted -- I think I drafted a declaration for
19 Mr. Hartney, and I think I wanted him to take a look at it and
20 make sure it was accurate and ask questions. As a result of
21 that, Mr. Hartney, you know, wanted to make sure he crossed the
22 Ts and dotted the I's, and he wanted to redo the searches.
23 This would have been probably the fifth search or maybe sixth
24 search at this point in time on August 30.

25 But we were given at that point new email addresses

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Maloney - Redirect

1 from the court for Mr. Isikoff. One was a Yahoo!/Inc.com, and
2 the other one was an oath.com. I made sure that Hartney had
3 those, so we had a total of three email addresses for Isikoff.
4 But I also made sure that Mr. Hartney searched just the word
5 "Isikoff" because it would come up in regard -- if Isikoff was
6 in the email address. It wouldn't matter what the extension
7 was, so he would find that.

8 And I also told him we needed to expand the date
9 range, because prior to the Court's order, I had him look at
10 the time frame from when we received the deposition transcript
11 to the time the Isikoff article -- I think that was June 28
12 when we received it, if I'm not mistaken, and the article came
13 out on July 15. So I asked him initially to search for email
14 traffic and communications with Mr. Isikoff about the Jarrah
15 transcript in that time period.

16 The Kingdom insisted that the scope and duration be
17 expanded. I didn't quite understand the rationale for going
18 back to June 1 when the deposition hadn't even taken place
19 then. But when the Court ordered that, we complied, and this
20 is what I asked Mr. Hartney to do, to expand the scope and
21 duration of the time frame to look at email traffic in and out,
22 so starting with June 1 to August 1.

23 Q. Mr. Maloney, earlier on cross-examination there was some
24 conversation about whether you searched people's personal
25 devices. Do you remember that?

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Maloney - Redirect

1 A. Yeah, I remember that.

2 Q. In your opinion, was it reasonable not to require a
3 forensic search of people's personal devices?

4 A. Yeah. I think not only was it reasonable, I think it would
5 have been insulting to the staff to say I want all your cell
6 phones and laptops. I also noticed that none of the other
7 declarations that had been filed, including the Kingdom's,
8 included searches of personal laptops and cell phones, which --
9 and none of the other plaintiffs firms and nobody else that was
10 putting in declarations. So I didn't consider that to be a
11 reasonable request. It wasn't something that even entered my
12 mind at the time.

13 Q. So you just made mention to -- you reviewed the
14 declarations that were filed by the Cozen O'Connor firm, is
15 that right?

16 A. I did.

17 Q. Did I understand you to say that they didn't include any
18 searches of personal devices in their searches?

19 A. My memory is that they had performed an IT search similar
20 to the one that Mr. Hartney did at our firm to look at who had
21 access to the transcript and if it was ever sent anywhere. I
22 don't recall any declaration, whether it was Cozen O'Connor,
23 Motley Rice, the Kellogg Hansen firm, there were a number of
24 firms, Anderson Kill -- there were a lot of firms that were at
25 that Jarrah deposition that had access to the transcript, and I

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Maloney - Redirect

1 did look at a number of declarations as they came in at various
2 times. I don't recall any of them saying that they looked at
3 personal cell phones and personal laptops.

4 Q. So other than searching the firm's servers and interviewing
5 each one of the individuals who was known to handle the
6 transcript, you didn't feel that anybody rose to the level of
7 being a suspect that you needed to image or forensically image
8 their personal devices, is that right?

9 A. Yeah. The information I found did not create any
10 additional cause for concern or increased suspicion. Even the
11 emails to Mr. Isikoff seemed benign to me. We had
12 communications with a number of journalists. Keep in mind, the
13 summer of 2021 was the lead-up to the 20th anniversary, and
14 there was a lot of media attention and focus and interest on
15 the case and on the families. And families were being
16 interviewed. The firm was being contacted. So the Isikoff --
17 the fact that there were three emails between Mr. Isikoff and
18 Mr. Kreindler and one from John Fawcett was probably -- that's
19 one or -- one of the three or four out of probably 30 or 40
20 during that same time period with other journalists. So that
21 did not stand out to me. It would have certainly raised a red
22 flag if there was something about Jarrah in those emails, but
23 there was not.

24 So it was just the opposite. To me it allayed any
25 suspicion when I saw that email traffic. I knew, however, that

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Maloney - Redirect

1 Mr. Shen and Mr. Kellogg would seize upon any communication
2 with Mr. Isikoff as something sinister. That's not the case.

3 Q. Take a look at tab 35, if you would. Can you identify this
4 document for me.

5 A. It's an email chain. I think it's between me and
6 Mr. Hartney in August, August 30 and 31, of this year.

7 MS. KIRSCH: I'd like to move this into evidence.

8 MR. SHEN: No objection.

9 THE COURT: It's accepted. 35.

10 THE WITNESS: 35.

11 THE COURT: 35.

12 (Kreindler Exhibit 35 received in evidence)

13 BY MS. KIRSCH:

14 Q. If you look at the top couple of emails, can you just
15 explain to me what's going on in this exchange about searching
16 for the word "Isikoff"?

17 A. Yeah.

18 Q. What are you discussing here?

19 A. Yeah. Mr. Hartney is a very intelligent guy. He's a very
20 IT guy, but he's a little bit of a Nervous Nellie. Now that he
21 was being asked to swear out a declaration, he wanted to make
22 sure he had everything right and crossed his Ts and dotted his
23 I's. And when I told him about the new email addresses, he
24 said, Well, I didn't have those email addresses before when he
25 did his prior searches. I said, OK. Well, that's all right.

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Maloney - Redirect

1 Do it now.

2 Secondly, I said, Wouldn't your initial search have
3 discovered those despite not having the email full address
4 because it contained the word "Isikoff"? And he responded,
5 Yes, you're right, it would have caught those. In fact, when
6 he did another search, there was nothing additional.

7 Q. So let's look at tab 36, if we could.

8 A. OK.

9 Q. Do you recognize this document?

10 A. Yes. This is Mr. Hartney forwarding to me the email that
11 he discovered between John Fawcett and Mr. Isikoff that was
12 July 12.

13 MS. KIRSCH: I'd like to move this into evidence.

14 MR. SHEN: No objection.

15 THE COURT: It's accepted.

16 (Kreindler Exhibit 36 received in evidence)

17 BY MS. KIRSCH:

18 Q. What's going on in this discussion with Mr. Fawcett?

19 A. So after Mr. Hartney found this email, I contacted
20 Mr. Fawcett, and I think I had a conversation before this. I
21 can see that the date of the email at the top is September 1,
22 but I'm fairly certain I actually spoke to Mr. Fawcett about
23 why he was in communication with Mr. Isikoff, did he discuss
24 Jarrah. Again, the same questions again, but I said why did
25 you send him this privilege log? Was this privilege log ever

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Maloney - Redirect

1 filed on the public docket? Because the copy I had, at least
2 the one that was easily accessible to me, didn't have the
3 ECF filing at the top. But it was not marked confidential, and
4 that's what Mr. Fawcett confirmed for me, but I looked myself
5 to confirm it.

6 Q. Let's take a look at tab 41.

7 A. OK. Another series of emails between myself and
8 Mr. Hartney. And as you can see, the dates are -- this chain
9 started on July 29, but there's an intervening one, and then it
10 ends at the top of the page at September 2.

11 MS. KIRSCH: I'd like to move this into evidence.

12 MR. SHEN: No objection.

13 THE COURT: It's accepted.

14 (Kreindler Exhibit 41 received in evidence)

15 MS. KIRSCH: OK.

16 THE WITNESS: And this one, I don't know if you want
17 me to tell you, explain what I'm seeing here.

18 BY MS. KIRSCH:

19 Q. Sure.

20 A. This is with regards to the cloud-based server which is
21 available to a certain number of authorized consultants to be
22 able to look at materials that we post there for them with --
23 it's password protected, and we can tell who, if anyone, looks
24 at any particular document and when they did that. I think I
25 asked -- we covered this a little bit on cross-examination, and

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Maloney - Redirect

1 I didn't have all the answers, at least I wasn't understanding
2 it correctly on July 29. And this is -- I got answers soon
3 after July 29.

4 But, again, on September 2 when Mr. Hartney was told
5 he needed to do a declaration, I wanted to make sure I
6 understood and he understood what searches had been performed,
7 and he showed me that there were only these five deposition
8 transcripts that were actually viewed by anybody. And as you
9 can see, it's Muhanna, Mersal, Freeman, Mana, and Olivier.
10 Nobody looked at Jarrah.

11 Q. Thank you. Let's look at tab 43.

12 Can you identify this document.

13 A. This is an email from John Fawcett. I'm trying to
14 understand. He sent from the Kreindler server a message, I
15 think, to the consultant that you can't email these around to
16 people that haven't signed the protective order, and the
17 attachment at the top indicates it was the Qattan transcript,
18 the Jarrah deposition transcript. And I asked John about this,
19 and this was, in fact, the same consultant we've been talking
20 about that was authorized to receive the transcript who I
21 followed up with myself personally.

22 MS. KIRSCH: I'd like to move this into evidence.

23 MR. SHEN: No objection.

24 THE COURT: Accepted.

25 (Kreindler Exhibit 43 received in evidence)

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Maloney - Redirect

1 BY MS. KIRSCH:

2 Q. Mr. Maloney, when you saw Mr. Fawcett's email to the
3 consultant, does this reinforce your understanding that
4 Mr. Fawcett understands the obligations under the protective
5 orders?

6 A. Yes. He was reminding the consultant that he couldn't
7 share this. That these were protected documents, and they
8 couldn't be shared. In fact, the consultant told me
9 Mr. Fawcett had reminded him of that when he sent them. And I
10 should also point out Mr. Fawcett told me he sent it to this
11 consultant on the first day or second day, either July 15 or
12 16.

13 THE COURT: Can I just ask a clarifying question,
14 Mr. Maloney?

15 THE WITNESS: Yes, your Honor.

16 THE COURT: I'm confused. So there's a July 6 email
17 from Fawcett.

18 THE WITNESS: Yes.

19 THE COURT: From his Kreindler email address.

20 THE WITNESS: Correct.

21 THE COURT: And he writes, "You can't email these
22 around to people that haven't signed the protective order."

23 THE WITNESS: Yes.

24 THE COURT: How do we know to whom that July 6 email
25 is being sent? I see there's something redacted above.

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Maloney - Redirect

1 THE WITNESS: Yes, it's redacted, your Honor.

2 THE COURT: Is that --

3 THE WITNESS: That's the consultant number one.

4 THE COURT: There's another -- I'm confused. Maybe
5 you can't answer it because it's confusing to you, too.

6 It appears that there's the July 6 email from Fawcett.
7 It's not clear to whom he's sending it. Then there's an email,
8 I'm assuming it's from redacted to you, on September 1.

9 THE WITNESS: Yeah. I believe --

10 THE COURT: And that something's being sent from the
11 ProtonMail.

12 THE WITNESS: Yeah.

13 THE COURT: I'm confused who's sending what. I see
14 there's three possible emails, one on July 6, one on
15 September 1, one on September 2.

16 THE WITNESS: My best recollection is that the
17 consultant emailed me on his ProtonMail server the original
18 email he got from John Fawcett, which is what you see at the
19 bottom. I asked the consultant to forward me John's email, and
20 he did. That's what this is.

21 THE COURT: I see. Thank you.

22 BY MS. KIRSCH:

23 Q. Mr. Maloney, there was a discussion, I think, yesterday
24 that the consultant actually signed his declaration on -- as
25 early as September 2, even though others were not asked to sign

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Maloney - Redirect

1 their declarations until the end of September. Do you know why
2 it was that the consultant was asked to sign a declaration that
3 early?

4 A. That was by me. I wanted to find out -- I knew that he had
5 received a copy of the transcript, whereas others had not, and
6 I wanted to make sure we nailed down all the facts on how he
7 got it, when he got it, what he did with it. And as soon as I
8 had that communication with him, I said, You know, we're going
9 to need you to do a declaration. He goes, No problem. I may
10 be traveling soon. Let's get it now. He got it right away.

11 Q. As a general matter, Mr. Maloney, how often would you say
12 you communicate with Mr. Fawcett?

13 A. On a near daily basis. In fact, in the summer of 2021,
14 probably almost every day. Maybe not weekends, but sometimes
15 on weekends, too.

16 Q. To what extent were you aware of Mr. Fawcett's physical
17 whereabouts as a general matter?

18 A. Well, obviously, if we were both in the office, I would see
19 him in the office. But, again, not everybody was going to the
20 office every day during the pandemic in the summer, so there
21 were times where we were working out of our homes. But
22 Mr. Fawcett was clearly working from home. He said he was
23 working from home. He was available from home, and he had a
24 computer there that he would have access to the Kreindler
25 server as if he was sitting at his desk, just like the rest of

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Maloney - Redirect

1 us. There were times where he was on Zoom where I could see
2 the background in his apartment. Growing some tomato plants or
3 something like that.

4 Q. Did you communicate with Mr. Fawcett about the protective
5 orders?

6 A. Multiple times, yeah. I mean, all the time, all the time
7 because anytime we would get a new production, say, from the
8 FBI, we knew that they would have to be protected. And there
9 were times we'd have to ask the Justice Department whether or
10 not we could use a particular document at a deposition. There
11 was constant conversations about what was protected, what's
12 not, what's confidential. There's, obviously, a separate order
13 that governs the Kingdom's documents different than the MDL
14 order, and they're actually completed a little differently, but
15 we treated them pretty much the same. None of those documents
16 should ever be available through the public domain. You can't
17 file them on the docket unless they're under seal or redacted.
18 We can't even share them with our own clients.

19 Q. In the 20 years you worked with Mr. Fawcett, did you ever
20 get any indication that Mr. Fawcett did not understand his
21 obligations under the protective orders?

22 A. He understood them. And for 20 years we didn't have any
23 issue or problems with Mr. Fawcett with any confidential
24 documents.

25 Q. Mr. Fawcett never indicated in any way that he did not

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Maloney - Redirect

1 intend to honor his obligations under the protective orders?

2 A. Never said that. In fact, the office where he and Steve
3 worked and stored documents, we called it the 9/11 war room,
4 that was locked every night. We had hard copies. Nowadays we
5 of a new office, and there are very few hard copies. But up
6 until earlier this year, we were in the office building next
7 door. The office where the documents were kept, any hard
8 copies, the files, locked, and only Mr. Pounian, I think
9 Mr. Fawcett, and the mailroom guy. I didn't even have a key to
10 that office. They were locked every night. When anyone was
11 not there, the room was locked.

12 Q. In fact, Mr. Pounian and Mr. Fawcett shared an office
13 space, is that right?

14 A. Yeah.

15 Q. Did you ever order or direct Mr. Fawcett to send the Jarrah
16 transcript to Mr. Isikoff?

17 A. Never. Did not.

18 Q. Were you aware before September 27 that Mr. Fawcett had
19 sent the Jarrah transcript to Mr. Isikoff?

20 A. I was not aware until midday on the 27th of September.

21 Q. Did you ever approve or condone of Mr. Fawcett sending the
22 Jarrah transcript to Mr. Isikoff?

23 A. No.

24 Q. Did you ever have any reason to suspect that Mr. Fawcett
25 sent the Jarrah transcript to Mr. Isikoff?

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Maloney - Recross

1 A. I had no reason to suspect it. And when I did the internal
2 investigation, I was able to corroborate, in my mind, that
3 nobody at Kreindler had sent the Jarrah transcript to Yahoo!
4 News or Isikoff.

5 MS. KIRSCH: I have no further questions.

6 THE COURT: Thank you.

7 MR. SHEN: Your Honor, just five minutes.

8 THE COURT: Sure.

9 THE WITNESS: Mr. Shen, I need the book back --

10 MR. SHEN: We can do it without it.

11 THE WITNESS: -- the big one?

12 RECROSS EXAMINATION

13 BY MR. SHEN:

14 Q. Now, Mr. Maloney, counsel for the Kreindler firm asked you
15 some questions about sending the Jarrah transcripts to
16 consultant A?

17 A. Yes. And we've called him consultant one, but I'm not
18 going to quibble, yes.

19 Q. Sure. Let's look at Exhibit 97, please.

20 A. In the Kreindler book?

21 Q. No, it will be on your screen.

22 A. Oh.

23 Q. Exhibit 97, as it's coming up, this is an email chain from
24 Mr. Hartney to yourself, and he's telling you that he's been
25 looking for the email that Mr. Fawcett sent to the consultant

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Maloney - Recross

1 with the transcript?

2 A. Yeah.

3 Q. And he can't find it, correct?

4 A. Yeah. I can explain that, yeah.

5 THE COURT: Mr. Shen, do you want to move this? Given
6 Ms. Kirsch's position, do you want to move this into evidence?

7 MR. SHEN: Well, your Honor, I think it's most
8 efficient if we address all these issues after the hearing.

9 THE COURT: I was going to ask that the parties meet
10 and confer about that, but I wonder if on a going-forward
11 basis -- Ms. Kirsch, I don't know what your position is going
12 to be. Do you want to do this on every document going forward?

13 MS. KIRSCH: I think it's more efficient to move this
14 into evidence as we go. We can meet and confer on the other
15 ones. Again, that was something that would have been the most
16 efficient had we done it in advance of the trial, but I think
17 it's probably easier to make sure that we just move them in as
18 we go.

19 THE COURT: Any objection as to this document?

20 MS. KIRSCH: None.

21 THE COURT: It's accepted.

22 (KSA Exhibit 97 received in evidence)

23 BY MR. SHEN:

24 Q. Mr. Hartney's telling you on August 31 that he can't find
25 that email, correct?

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Maloney - Recross

1 A. He did. But we had a conversation about this. Turns out
2 that was incorrect.

3 Q. Let's take a look at Exhibit 98. Can we just get rid of
4 the call out, please.

5 At the bottom of the email, September 1, you were
6 asking Mr. Fawcett to send you a copy of the transcript, right,
7 or send a copy of the email that he sent to consultant one?

8 A. Yes.

9 Q. And he writes back and says, If Mr. Hartney can't find it,
10 how am I supposed to find it? And this whole process is
11 creeping me out. Do you see that?

12 A. Yes.

13 Q. This was actually on September 1, the day after the Court
14 issues its August 30 order requiring additional declarations,
15 right?

16 A. Yeah, that's the date.

17 Q. So you're telling Mr. Fawcett, well, it's really important
18 that we know the answer, and we need to get this actual email,
19 right?

20 A. Yes.

21 Q. All right. Let's go to Exhibit --

22 THE COURT: Sorry, Mr. Shen. I want to try and
23 minimize the work on the back end.

24 Any objections to admitting this document?

25 MS. KIRSCH: No, no objection.

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Maloney - Recross

1 THE COURT: OK. It's accepted.

2 (KSA Exhibit 98 received in evidence)

3 BY MR. SHEN:

4 Q. Let's look at Exhibit 99. This has already been admitted
5 into evidence. Ms. Kirsch showed you this document. In fact,
6 what happens here is you have to go to the consultant to ask
7 the consultant to send you the email that Mr. Fawcett had sent
8 to him, correct?

9 A. Well, ultimately, I need to explain. I can't answer that
10 with a yes or no. May I?

11 Q. Sure.

12 A. OK. So, yes, I asked the consultant to send the email. It
13 turns out there was a miscommunication between Mr. Hartney and
14 I in terms of who the consultant was. I gave him the name of
15 the consultant. I didn't know the consultant's email address
16 at the time. He actually found -- prior to that he had already
17 found Mr. Fawcett's email to that consultant, but it was under
18 a different email address. There's -- it's not encrypted, but
19 it was something that I didn't recognize. So I asked
20 Mr. Hartney a few times, Did you find the email to so-and-so by
21 name? And he said, No, I didn't find that. I can't find that.
22 And I was puzzled by that because Mr. Fawcett had told me from
23 the very beginning he, in fact, sent the Jarrah transcript to
24 that consultant.

25 So I said, well, let's look at this another way. Let

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1 me contact the consultant and find out if that email exists,
2 and that's what you see here, the consultant sending me the
3 email that he got from John Fawcett. Then I showed that to
4 Mr. Hartney, and he says, Oh, I've had that all along. This is
5 the same consultant I told you about back in July. He just
6 hadn't -- he didn't put the connection together between the
7 name of the consultant and the email address that popped up in
8 his initial search.

9 So, really, it was a miscommunication in terms of
10 myself and Mr. Hartney on what he had found. He had found that
11 from the very beginning. So it turned out when I got this, it
12 just confirmed what I just told you.

13 Q. Thank you.

14 Mr. Maloney, did you ask Mr. Fawcett why he was
15 creeped out when you were asking him to search for things?

16 A. No, I didn't talk to him about it.

17 MR. SHEN: All right. No further questions. Thank
18 you.

19 THE COURT: All right. Thank you, Mr. Maloney. You
20 are done. You can stay in the courtroom now.

21 THE WITNESS: Thank you.

22 (Witness excused)

23 MR. SHEN: Your Honor, Saudi Arabia calls Megan
24 Benett.

25 MEGAN WOLFE BENETT,

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Benett - Cross

1 called as a witness by the Defendant,

2 having been duly sworn, testified as follows:

3 CROSS-EXAMINATION

4 BY MR. SHEN:

5 Q. Good morning, Ms. Benett. You took the Jarrah deposition
6 on June 17 and 18, correct?

7 A. I did.

8 THE COURT: Ms. Benett, sorry. Can I ask you to sit
9 closer to the microphone so everyone can hear you.

10 Q. And that's one of the depositions you took in the case.
11 Mr. Pounian took most of them?

12 A. That's right. Between June and January -- sorry, January
13 and June, Steve Pounian led probably 30-some depositions. I
14 was lead on Jarrah, and I also took the Zeinab Affifi
15 deposition, and I defended a couple of the other depositions
16 that the Kingdom had noticed.

17 Q. Now, Mr. Fawcett also attended the Jarrah deposition,
18 correct?

19 A. So that deposition was by Zoom. I was in a room by myself
20 in the office. There were people who were attending who were
21 in a conference room, but given the nature of the documents and
22 sort of the many things you have to manage when conducting a
23 deposition by Zoom, my focus was primarily on getting to my
24 questions, getting the testimony that I was seeking. I believe
25 John was there. I may have seen him in and out, but he

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Benett - Cross

1 certainly wasn't in the room with me.

2 Q. But you know he attended the deposition, and he heard what
3 happened during the deposition, correct?

4 A. I saw his name on the transcript. I don't know how much --
5 I'm assuming he attended the entire deposition, but I was not
6 with him for that.

7 Q. Mr. Fawcett manages all the discovery material in this
8 case, correct?

9 A. So he, up until September 27, had access to all of the
10 discovery material. A lot of people relied on him. I, for
11 example, know where the materials are and did not necessarily
12 need to rely on him, although I would sometimes ask him to help
13 direct me to information. We have a paralegal on the case who
14 does some of the document management. We had another paralegal
15 who we brought in for the depositions who was helping to manage
16 things like deposition exhibits. Getting ready for the
17 deposition was an enormous process because we had to go through
18 and prepare all of those -- the documents we thought we might
19 use as exhibits during the deposition, and we had several
20 people who were involved in that.

21 Q. And Mr. Fawcett was one of them, correct?

22 A. So I don't -- he may have been involved in pulling things.
23 I mean, there was a whole team that was working together. He
24 was not -- I don't think he was lead on putting together the
25 deposition exhibit files.

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Benett - Cross

1 Q. Mr. Fawcett worked as an investigator and researcher on all
2 aspects of the 9/11 case for the Kreindler firm, correct?

3 A. That's a correct statement.

4 Q. Did Mr. Fawcett assist you in preparing for the Jarrah
5 deposition?

6 A. So my preparation for Musaed Al Jarrah was I worked a lot
7 with Steve on that. I worked a lot with Julia in our office on
8 the exhibits. John was certainly involved. So he was one of
9 the team. Duke was probably involved also.

10 Q. Ms. Benett, if you could just focus on answering my
11 question.

12 The question was did Mr. Fawcett assist you, and I
13 believe the answer was yes, correct?

14 A. He was one of the people who assisted me, yes.

15 Q. Did he see a copy of your deposition outline before the
16 deposition?

17 A. I don't recall.

18 Q. He certainly assisted in identifying and preparing
19 exhibits, correct?

20 A. He would respond to my requests is your -- I guess what do
21 you mean by "assisted"?

22 Q. Did he know which exhibits you were going to use at the
23 deposition?

24 A. To be honest, I didn't know until partway through all the
25 exhibits I would be using. It was an on-the-go process with

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Benett - Cross

1 some of them.

2 Q. Certainly, you had assembled a collection of exhibits you
3 may use. Was he aware of what you might use?

4 A. Well, you're asking me a question about his state of mind.
5 I don't think I can answer that.

6 Q. I'm asking for your knowledge. Did he assist in putting
7 together that collection of exhibits?

8 A. He helped me out in preparing for the deposition. I feel
9 like your question is did he know what my exhibits were going
10 into the deposition, and I don't know the answer to that.

11 Q. Now, Mr. Fawcett knew what topics you were going to explore
12 at that deposition, correct?

13 A. I feel like these are questions better for Mr. Fawcett, and
14 I don't -- I assume he did.

15 Q. I want to be very careful here not to compound the
16 Kreindler firm's violation of the protective order by airing
17 confidential information at this hearing, so I'll ask you to
18 answer these questions without disclosing the specific content
19 of what occurred at the deposition.

20 A. So, Andy, I'm going to answer the questions, and I'm going
21 to let my lawyer object to your grandstanding.

22 THE COURT: Ms. Bennett, please, your lawyer can stand
23 up and object as necessary. I'm not sure that was
24 grandstanding. He's just simply trying to make sure that
25 everybody is being sensitive to this subject matter, as we

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Benett - Cross

1 discussed before this hearing began.

2 So, Ms. Kirsch, I'll hear you.

3 MS. KIRSCH: I was just going to refer back to your
4 Honor's ruling, which was fairly narrow, but I would also -- I
5 would say that Ms. Bennett should be able to answer -- we're
6 here in an open courtroom. She should be able to answer the
7 question fully. I think she is mindful, but you could give
8 again, of the instruction with respect to not revealing the
9 actual content, but that everything else is a topic that's
10 appropriate for the courtroom.

11 THE COURT: Ms. Bennett, I assume you're familiar with
12 the order I issued yesterday. We're not going to discuss the
13 content of the deposition that happened other than the basis
14 that Mr. Fawcett relied on as his explanation for why he
15 disclosed the transcript.

16 Do you understand the scope of my ruling?

17 THE WITNESS: I think so. So my takeaway from the
18 order was that we're not going to discuss the actual exchange
19 during the deposition.

20 THE COURT: That's correct.

21 THE WITNESS: But that to the extent information
22 elicited during the deposition formed the basis of John
23 Fawcett's explanation for why he did what he did, that -- I
24 mean, I just -- is that not the --

25 THE COURT: We're going to talk about the fact that

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Benett - Cross

1 Mr. Fawcett said that allegations that Jarrah had child
2 pornography on his computer is why he felt compelled to
3 disclose it. So that is what we're going to talk about, but
4 we're not going to talk about anything about questions that
5 were asked, what was elicited during the deposition, what was
6 introduced as an exhibit. That is all off limits.

7 THE WITNESS: OK. Understood.

8 BY MR. SHEN:

9 Q. Now, Ms. Benett, during the deposition you asked Mr. Jarrah
10 about the event that the judge just referenced, correct?

11 A. About the possession of child pornography?

12 Q. Yes, ma'am.

13 A. Yes.

14 Q. And that issue was not publicly disclosed prior to the
15 deposition. That wasn't public information, correct?

16 A. I don't know the answer to that.

17 Q. Well, this is an event that Mr. Fawcett cites as a
18 rationale for violating the protective order and leaking the
19 transcript to Michael Isikoff, correct?

20 A. OK.

21 Q. You understand that, right?

22 A. Yes, I saw the declaration.

23 Q. Now, the Kreindler firm has retained a number of FBI agents
24 to assist in this case. That's correct, right?

25 A. There have -- yes, we have several former FBI agents who

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Benett - Cross

1 have -- who are working with the families in this case.

2 Q. And let's listen to what Jim Kreindler has to say about
3 these former FBI agents.

4 MS. KIRSCH: What are we doing now?

5 MR. SHEN: It's on your screen.

6 MS. KIRSCH: Is this a question for Ms. Bennett? Is
7 this something that I should be reviewing before I get to --

8 THE COURT: I assume there's going to be a question.
9 That's what we're doing here. If you want to review, do we
10 have a transcript that Ms. Kirsch can review before we air the
11 video?

12 MR. SHEN: Is it Exhibit 18, reference 31:14. These
13 are all public statements made by Mr. Kreindler.

14 MS. KIRSCH: OK. What's the reference?

15 MR. SHEN: 34:14.

16 MS. KIRSCH: And what is this a transcript of,
17 Mr. Shen?

18 MR. SHEN: This is a transcript of Mr. Kreindler's
19 public statements at Dartmouth University.

20 MS. KIRSCH: I'm sorry. Public statements when and
21 where?

22 MR. SHEN: At Dartmouth University.

23 MS. KIRSCH: I'll just take a moment and read it,
24 please, your Honor.

25 THE COURT: Mr. Shen, you're going 34:14 to?

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Benett - Cross

1 MR. SHEN: To 52. I'm sorry. It starts at 31:14.

2 I'm sorry if I misspoke.

3 THE COURT: Ms. Kirsch, did you hear that?

4 MS. KIRSCH: I did.

5 MR. SHEN: 31:14 to 31:52. Apologies.

6 MS. KIRSCH: OK. So this is from the 2019 speech at
7 Dartmouth, is that right?

8 MR. SHEN: It's the same speech that we played
9 yesterday.

10 MS. KIRSCH: Which was in 2019?

11 MR. SHEN: I don't know offhand. Yes.

12 THE COURT: I don't think there's a dispute.

13 MR. SHEN: 2019.

14 THE COURT: 2019.

15 MS. KIRSCH: OK. That's fine. No problem playing
16 Mr. Kreindler's speech.

17 MR. SHEN: It will be on the screen in front of you.

18 (Audio played)

19 BY MR. SHEN:

20 Q. Now, Ms. Benett, is Mr. Kreindler being truthful here that
21 FBI agents have told him and the other attorneys at the firm
22 what they know concerning their 9/11 investigation?

23 A. I can't speak to what anybody has told Jim. I mean, I
24 don't -- the agents that I've -- the folks who come on to work
25 with the families that I've spoken with, I guess I wouldn't --

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Benett - Cross

1 I don't know if I would characterize my conversations with them
2 that way, but my role and my relationship with them is
3 different than Jim's, but I can't say -- I certainly couldn't
4 opine as to whether Jim is being truthful or not about that
5 statement.

6 (Continued on next page)
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Benett - Cross

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Benett - Cross

2 BY MR. SHEN:

3 Q. Let me ask you a more specific question.

4 Ms. Benett, the reason you know about the event that
5 you asked Mr. Jarrah at his deposition is because an
6 investigator who works at the firm who is a former FBI agent
7 told you about that event, correct?

8 MS. KIRSCH: I want to say here, your Honor, that the
9 document information that related to this breach were
10 compelled, produced, and we produced them, and under the law,
11 your Honor gave us an order that does not waive any work
12 product. This is not of the same nature, and so I want to
13 caution the witness to answer as best she can, but this is
14 getting close to the area of work product, and we do have a
15 concern about airing that in a public court.

16 THE COURT: OK. Thank you. And I did issue the order
17 that you just referenced.

18 Mr. Shen, if you could just be careful.

19 THE WITNESS: Can the court reporter repeat the
20 question?

21 (Record read)

22 A. I don't think that's a correct statement.

23 Q. Ms. Benett, when did you learn about that event that you
24 asked Mr. Jarrah about?

25 A. I had heard rumors about it from sort of the periphery of

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Benett - Cross

1 our work, not through anybody working with us or working with
2 the families, maybe a year or a year and a half. I guess what
3 I would call sort of some chatter.

4 Q. You said a year or a year and a half ago before the
5 deposition?

6 A. I will confess that COVID has sort of -- it was certainly
7 before the deposition, but I don't remember if it was --
8 probably a year and a half before I think was the first time
9 that I had heard rumors of that.

10 Q. That would have been at the beginning of 2020, roughly?

11 A. I really am uncomfortable with the date.

12 Q. We are just talking general time frames. Roughly,
13 beginning of 2020?

14 A. I don't know.

15 Q. You said you had heard rumors. Who had you heard rumors
16 from?

17 MS. KIRSCH: So that's the same objection. Maybe you
18 can describe generally the nature of the people from whom you
19 heard this, to the extent you can, but don't reveal any work
20 product.

21 Q. Let me ask a new question. Had you heard those, quote,
22 rumors from FBI agents who were working at the Kreindler firm?
23 That's a yes or no answer.

24 A. Not from agents who were working at the Kreindler firm, no.

25 Q. From agents who were working elsewhere?

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Benett - Cross

1 A. So, I did at one point hear that from a former FBI agent
2 who does not work at the Kreindler firm, but had come on board
3 to help with the families at one point, but that is not the
4 first place that I had heard this.

5 Q. Where is the first place you heard it?

6 A. It was in the course of our investigation, there were a
7 couple of people who came in the office and it was from them
8 that I had heard this.

9 THE COURT: You don't need to give names, but I think
10 you can describe generally if these were staff people, if these
11 were people you had hired as consultants.

12 THE WITNESS: They were outside people who had come
13 and asked and volunteered for a meeting with us.

14 Q. Did they have documents about this event? That's just a
15 yes or no question.

16 MS. KIRSCH: It really isn't. This case is all about
17 the investigation that the Kreindler firm has been doing in
18 order to build its case. The absolute purpose that this
19 hearing ought not to serve is to allow the Kingdom to start
20 walking around into the work product processes and how they
21 conduct their investigation.

22 MR. SHEN: That's not what we are intending to do,
23 your Honor. This line of questioning goes directly to Mr.
24 Fawcett's stated basis for the leak, and when he found out
25 about that leak and when the firm knew about this information,

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Benett - Cross

1 when the firm knew about it, is directly relevant to that.

2 MS. KIRSCH: I would disagree that. Perhaps there is
3 some relevance when Mr. Fawcett learned that information.
4 Those are questions that could be directed to Mr. Fawcett. But
5 the Kreindler firm's work product, the people that they work
6 with in order to build their factual investigation, that is
7 just not appropriate for the adversary's counsel to put counsel
8 up on the stand and ask those questions. That is very
9 irregular and it's inappropriate.

10 THE COURT: What I do think is relevant is when the
11 firm had the information and who knew it at the time. So I am
12 not going to require Ms. Benett to answer questions about who
13 provided that information or describe those people, but I do
14 think it is relevant, for the purpose of today's hearing, to
15 know when it was provided and whether or not there was a
16 document that might be on the firm's server that corroborates
17 the allegation. So I do think that those two facts are
18 relevant for the purposes of the hearing.

19 MS. KIRSCH: This is just me being not that smart.
20 What is the relevance of a document being on the server that
21 corroborates, and I think you mean the allegation against
22 Mr. Jarrah?

23 THE COURT: Yes. You're asking me?

24 MS. KIRSCH: I was. But I shouldn't, your Honor. I
25 apologize.

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Benett - Cross

1 THE WITNESS: Given the colloquy, maybe I can
2 volunteer a response and see if that fits within the scope of
3 what the Court is --

4 THE COURT: Sure.

5 THE WITNESS: So, sometime shortly before the -- not
6 shortly, but sometime -- there were so many depositions that we
7 were managing and leading, especially up until the end of June.
8 At some point there was a former FBI agent who had been
9 involved and supervised the search of Musaed Al Jarrah's
10 computer, during which time his two agents recovered multiple
11 sexual images of minors that they believed had been saved on
12 the computer, and that they believed constituted knowing
13 possession of child pornography, that they then sent to the
14 National Center for Missing and Exploited Children because of,
15 apparently, a preexisting relationship between the Bureau and
16 the National Center when that sort of imagery is recovered
17 during the course of an investigation. And I was told that
18 those agents had approached Mr. Jarrah in public with copies of
19 the images that they told him they had taken from his computer.

20 THE COURT: I think the line of questioning is when
21 did you learn this information. So I think you had said it was
22 about a year and a half before. So these agents told you this
23 information about a year and a half ago?

24 THE WITNESS: I'm sorry. To be clear, the chatter,
25 the rumor, was maybe a year and a half ago, and that was not

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Benett - Cross

1 from an FBI agent. Then subsequently and shortly before the
2 deposition is when I learned this information that came from an
3 FBI special agent who had supervised the investigation into
4 Jarrah and specifically supervised the two agents who had
5 obtained the child pornography from his hard drive.

6 THE COURT: Mr. Shen.

7 BY MR. SHEN:

8 Q. You said that you had spoken directly to this agent?

9 A. I have definitely spoken with this agent, yes.

10 Q. That was before the Jarrah deposition, about these images?

11 A. So, that actually may have been the day of the deposition.

12 It was -- I'm not sure if it was before or -- it was a two-day
13 deposition. I don't know if it was before or maybe it was
14 during day one or day two.

15 Q. But you had spoken to this agent before the deposition, is
16 that right?

17 A. I don't know that that's right.

18 Q. I am just asking for the best of your recollection.

19 A. Then I will say I don't remember. I don't think so.

20 Q. And this agent, was he retained by the Kreindler firm, he
21 or she?

22 A. The agent has done some work for the 9/11 families. I
23 don't think this piece was connected to the work that agent had
24 done, but --

25 THE COURT: When you say worked for the 9/11 families,

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Benett - Cross

1 does that mean that the firm is paying him?

2 THE WITNESS: Yes, of course. Has worked with us on
3 behalf of the 9/11 families. And I guess I should add, I am
4 saying that because he was interested in working with the
5 families; he had asked to work with the families.

6 Q. When did this agent work for the Kreindler firm?

7 A. I would have to, you know -- I am actually not -- I am
8 going to ask for the court's direction here because I do
9 feel -- I understand the importance with respect to Jarrah and
10 these images, but I'm not sure how much of this is within or
11 beyond, if it gets into work product about our investigation.

12 THE COURT: I have already said that you can answer
13 questions related to when you or anyone else at the firm
14 learned this information. And I think that's the nature of the
15 questions that Mr. Shen is asking.

16 THE WITNESS: Could I hear the question back from the
17 court reporter?

18 BY MR. SHEN:

19 Q. The question is, when did this former FBI agent work for
20 the Kreindler firm?

21 MS. KIRSCH: With all due respect, I don't think
22 that's the same question.

23 MR. SHEN: If it was before or after the deposition,
24 was he an employee to the Kreindler firm?

25 MS. KIRSCH: I'm sorry. I thought we just clarified

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Benett - Cross

1 that what is relevant is when the Kreindler firm learned the
2 information, and when Ms. Benett learned the information, and
3 then perhaps if there is documentation. But who is retained,
4 how they work with consultants, how they do their research, how
5 they pay them, when they paid them, that is work product, it is
6 not appropriate.

7 THE COURT: Let's narrow in on when the firm received
8 the information. To the extent there needs to be questions
9 about the nature of the firm's relationship at the time that it
10 learned this information, we can address that later. But let's
11 focus now on when the firm learned the information.

12 BY MR. SHEN:

13 Q. Ms. Benett, you said that a year to a year and a half prior
14 to the deposition you had heard rumors. When had you first
15 heard more concrete evidence of the events that you asked
16 Mr. Jarrah about?

17 A. So it was either shortly before or in the course of the
18 Jarrah deposition.

19 Q. Were you shown documents?

20 A. I was not.

21 Q. Was anyone at the Kreindler firm shown documents?

22 A. I wasn't shown documents. I don't know if anybody else
23 was.

24 Q. Was Mr. Fawcett, to your knowledge, aware of these rumors a
25 year or a year and a half ago before the deposition?

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Benett - Cross

1 A. I don't know.

2 Q. Did you have discussions with him about it?

3 A. Certainly, in the context of the Jarrah deposition, when I
4 had the information about the photographs, I do remember it was
5 in the middle of that deposition when the images themselves
6 were described to me. I do think John Fawcett was around for
7 that.

8 Q. So --

9 A. I don't know. He may have known before. I just don't
10 know.

11 Q. My question pertains to what you actually know.

12 Is it your testimony that the first time the images
13 were described to you were actually in the course of the
14 deposition?

15 A. Yes. So I had -- there was some sort of general suspicion
16 that this was a thing prior, a year and a half before that or
17 so. Then there was more specific information that I learned.
18 I can't say that John Fawcett, when he did or didn't learn it.
19 But I learned in the course of the deposition, I was -- the
20 nature of the actual depictions of the child pornography taken
21 from Jarrah's computer were described to me.

22 Q. So the FBI agent was actually in the Kreindler offices at
23 the time?

24 A. I had got a message that described to me what those images
25 looked like.

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Benett - Cross

1 Q. Did the FBI agent know that you were in the process of
2 taking a deposition?

3 MS. KIRSCH: And why is that relevant, your Honor? I
4 am going to object to that.

5 THE COURT: Sustained.

6 Q. Was this FBI agent actually attending this deposition?

7 MS. KIRSCH: I am going to object to that as well.

8 MR. SHEN: What is the objection? If we have somebody
9 who has not entered an appearance on the sheet listening in on
10 a confidential deposition.

11 THE COURT: I think that that is relevant. I will
12 allow it.

13 MS. KIRSCH: OK.

14 A. So there was, in the office next -- I was taking the Zoom
15 deposition in a room in our office by myself. In that wing,
16 there were people who were walking, not in the office, not in
17 the Zoom room, not where the deposition was happening. He was
18 one person who was there during that time, generally in the
19 office. There were a number of other people, it was a weekday.
20 Certainly, nobody was in the Zoom room with me.

21 Q. So you were in a separate Zoom room. People were in
22 another room listening to the deposition, correct?

23 A. What I am saying is that when I spoke with him, he was not
24 watching a deposition. He was -- there is a corridor, there
25 are workstations. I stepped out. I had not met him before. I

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Benett - Cross

1 don't think I met him before. He told me information.

2 Q. But you don't know if he was watching the deposition in the
3 other room because you're taking a deposition by yourself?

4 A. Right.

5 Q. You don't know whether he is in the other room watching or
6 not, is that your testimony?

7 Let me ask you this. Do you know whether he attended
8 that deposition and watched that deposition?

9 A. I wouldn't be surprised if he did. I was in a room taking
10 the deposition by myself. How could I know where he was at the
11 very time that I am in that room? I don't have any reason -- I
12 guess I don't have any reason to think that he didn't, but I
13 can't tell you that I was in there with him during the
14 deposition because I was taking the deposition in a room by
15 myself.

16 Q. Does this person appear on the appearance sheet?

17 A. I don't know.

18 MR. SHEN: Let's put up the appearance sheet, please.
19 Exhibit 32.

20 Q. We are on page 2. That lists the attorneys from the
21 Kreindler firm. Do you see that?

22 A. Yes.

23 MR. SHEN: Keep scrolling. Keep going. Keep going,
24 please.

25 Q. There is also present. Is this individual listed here?

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Benett - Cross

1 A. I do not see his name there.

2 Q. Was it the practice of the Kreindler firm to have people
3 who did not actually make an appearance at these confidential
4 depositions to listen in on the depositions?

5 A. Was it the practice to have them listen in on depositions?

6 Q. Yes, ma'am.

7 A. So, I mean, I don't think it was a practice to do that. I
8 don't see his name there.

9 Q. Did this person sign the FBI protective order?

10 A. We have a chart of everybody who signed the protective
11 order, and we confirm before we give documents to them that
12 they have signed it. If he sat in the deposition, he would
13 have had to sign it as well.

14 Q. Not he would have had to. Did he sign it, do you know?

15 A. Andy, how can I know that?

16 Q. You didn't check?

17 A. Until today, you're telling me that he was sitting in the
18 deposition.

19 Q. First of all, I didn't know he was sitting in the
20 deposition. You testified --

21 MS. KIRSCH: May I object for a moment? There is a
22 confusion here. Ms. Benett testified she was in a room by
23 herself. Mr. Shen keeps asking questions about whether this
24 individual was in the deposition. We haven't established that
25 he was or he wasn't. Ms. Benett doesn't know. I don't

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Benett - Cross

1 understand why we are continuing this. She doesn't know if he
2 was there.

3 MR. SHEN: She testified it would not be surprising if
4 this individual was watching the deposition at the offices.
5 A. My point is, if he was, he would have signed the protective
6 order. You're saying, how could I not know if he signed the
7 protective order? Andy, I don't know if he was in the room.
8 If he was in the room, he signed the protective order.

9 THE COURT: All right. I think Ms. Benett has
10 indicated, I believe she has testified that he spoke with her
11 or communicated with her somehow during the deposition in order
12 to provide this information. But she doesn't know whether he
13 was actually listening to the deposition, and it would be the
14 practice of the firm that he would have signed the MDL order,
15 but he did not make an appearance at the deposition. I think
16 those are the facts we have established.

17 BY MR. SHEN:

18 Q. Let me just make sure I understand.

19 A. Can I just to Judge Netburn's --

20 THE COURT: No.

21 Q. Sitting here today, you don't know whether he signed the
22 FBI protective order, correct?

23 A. I have recently looked at them. It is true I cannot
24 remember. I have looked recently at the entire file of
25 everybody who has signed the FBI protective orders. I believe

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Benett - Cross

1 he has, but I can't say with absolute certainty, without
2 looking at that file, sitting here on the stand right now.

3 Q. And you don't know sitting here today whether he agreed to
4 abide by the MDL protective orders, correct?

5 A. If he had access to any MDL protected information, he
6 absolutely would have had to review and agree to the MDL
7 protective order.

8 Q. That's not my question. The question is, do you know
9 sitting here today?

10 A. So, just to be clear, your question is, irrespective of
11 whether he looked at protected material, did he review the
12 protective order?

13 Q. Do you know whether he looked at and agreed to abide by the
14 MDL protective order?

15 A. If he was given MDL protected materials, yes.

16 Q. But you don't know that, correct?

17 A. I mean --

18 Q. I am asking if you know if he looked at and agreed to abide
19 by it. Do you know if he did that?

20 A. If he was given MDL protected materials, he looked at it
21 and agreed to abide by it because that was our practice.

22 Q. But you don't know one way or another whether he did?

23 A. I know with 100 percent certainty that if he looked at MDL
24 protected materials, he reviewed and agreed to abide by the MDL
25 protected material because that is what our practice was.

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Benett - Cross

1 Q. Ms. Benett, did you discuss the content of the deposition,
2 the Al Jarrah deposition, with this individual during the
3 course of the deposition?

4 A. I did not.

5 Q. You didn't discuss any portion where you were asking
6 Mr. Jarrah about the content of images found on his computer?

7 MS. KIRSCH: Objection. I don't think there has been
8 any testimony that Ms. Benett asked about the content. Ms.
9 Benett said she was told about the content.

10 THE COURT: Well, we know that she asked Al Jarrah
11 about the content.

12 MS. KIRSCH: I am talking about the agent at the time.
13 The question said, did you -- you can read it back. I believe
14 the question was, Ms. Benett, when you were asking the agent
15 for information, did you reveal the content of the Jarrah
16 deposition? It was a misstatement of the testimony that we had
17 so far, and I object to it.

18 MR. SHEN: Ms. Benett testified shortly before the
19 deposition, or at the deposition, she discussed the specific
20 issue with the FBI agent, and the FBI agent described to her
21 the specific images on the computer. That's her testimony.

22 MS. KIRSCH: And my objection is Ms. Benett should be
23 giving the testimony, not Mr. Shen. It would be a lot easier,
24 particularly since I don't have realtime here.

25 THE COURT: Well, I believe that Ms. Benett has

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Benett - Cross

1 testified that either just before the deposition or during the
2 deposition this individual provided her with this information.
3 And Mr. Shen's question was, did you discuss with this
4 individual the content of the Al Jarrah deposition?

5 MS. KIRSCH: Which was answered.

6 A. I was approached and was told about the descriptions of the
7 images in the middle of the deposition. It was not a response
8 to a question from me.

9 Q. That wasn't my question. Did you discuss the content of
10 the Al Jarrah deposition with this individual during the course
11 of the deposition?

12 A. I did not.

13 Q. Did you discuss the content of the deposition with him
14 after the deposition?

15 A. We certainly discussed the child pornography. We
16 discussed -- I had questions about how they got the computer,
17 the basis of the search, sending the images to the National
18 Center for Missing and Exploited Children. So we had certainly
19 spoken about the sexual images of minors on Jarrah's computer
20 after the deposition.

21 Q. That wasn't the question, Ms. Bennett. Did you discuss what
22 Mr. Jarrah testified to with this individual after the
23 deposition?

24 A. It's a little hard to parse out because all of my
25 conversations with him have been about the child pornography.

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Benett - Cross

1 Q. So you may or you may not, you just don't know sitting here
2 today, is that your answer?

3 A. We certainly have had follow-up conversations about the
4 child pornography on Jarrah's computer, and what the steps
5 were, ordinary practice were, etc., that may well have
6 implicated some of the testimony. I don't want to say no, but
7 I know that my conversations have been primarily focused on
8 what he knew and what he was volunteering.

9 Q. At the time, was he an employee or retained by the
10 Kreindler firm?

11 A. I don't know if he -- I don't know if he was right then.
12 I'm not sure.

13 Q. Now I am going to switch to a different topic, Ms. Benett.
14 You're aware that after the leak to Mr. Isikoff, the
15 Kingdom of Saudi Arabia filed a request with the court to see
16 certain discovery pertaining to that leak, correct?

17 A. Yes, I am aware of that.

18 Q. And you're aware that the PECs responded to that letter,
19 correct?

20 A. Yes.

21 Q. And you have been in the courtroom while we discussed the
22 response with other witnesses.

23 My question for you is, did you do any investigation
24 of the leak prior to the initial response on July 29?

25 A. Me, personally?

LB2H9112

Benett - Cross

1 Q. You, personally.

2 A. I was out of town. I was on the West Coast at that time.

3 I was on the phone calls, internal phone calls, and PEC's phone

4 calls, but my role in the investigation wasn't really

5 until -- I helped with the declarations initially, obviously,

6 but then not until September.

7 Q. So, in submitting the July 29 letter to the court, the

8 Kreindler firm relied upon the investigation that was done by

9 Mr. Hartney and by Mr. Maloney, is that correct?

10 A. I think that's fair to say.

11 Q. Now, as of that July 29 letter, had anyone asked Mr.

12 Fawcett to submit a declaration to the court?

13 A. No. We, in fact, as you know, the Kreindler team itself

14 didn't submit declarations at that time. We thought that it

15 was frankly not -- we were waiting for the court to provide

16 guidance. We did not think it was appropriate for opposing

17 counsel, for the Kingdom to be directing the process. We were

18 concerned that it would inevitably turn into an opportunity to

19 dig through our files and to get into our work product. We did

20 not prepare declarations for anyone, and we wanted to wait for

21 the court to issue an order to guide the process.

22 Q. When is the first time that the Kreindler firm prepared a

23 declaration for Mr. Fawcett?

24 A. So probably it would be when I became involved or more

25 involved. There was the August 30 order that wanted the

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Benett - Cross

1 supplemental declarations. So certainly at that point I would
2 have been putting them in place.

3 Q. Let me pause there. So prior to August 30, no one had gone
4 to Mr. Fawcett and asked him to submit a declaration and
5 presented him with a draft declaration, to your knowledge?

6 A. I hadn't.

7 Q. After August 30, when is the first time that someone went
8 to Mr. Fawcett and presented him with a draft declaration?

9 A. So from August 30 up until September, the court had issued
10 an order. So there is the Yahoo! News motion to intervene that
11 stayed the August 30 date. I had started declarations as of
12 the August 30 order and then things were on hold. And then I
13 went back to it, with the court's Thursday, September 23 order.

14 So I don't know exactly when within that time frame I
15 would have started, but I certainly -- I think right around
16 August 30 I had conversations with everybody about the fact
17 that we would be preparing declarations.

18 Q. Did you have conversations with Mr. Fawcett on August 30?

19 A. I believe so. My recollection is that what I did was to
20 talk to everybody who would be filing declarations
21 individually.

22 Q. Did you ask him at the time whether he had sent the
23 transcript to Mr. Isikoff?

24 A. I went through what the questions were that we would have
25 to be responding to, and that I was asking if -- I said,

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Benett - Cross

1 essentially, based on our prior investigation, here is the
2 question that I am going to put in there and here is the
3 answer, is that correct?

4 Q. And he said it was correct that he had not leaked the
5 transcript to Mr. Isikoff?

6 A. So, I don't know that he said that expressly. I know that
7 by the time I presented him with the declaration that was what
8 it said and he had it.

9 Q. You don't recall him around that time actually telling you
10 he had not sent the transcript to Mr. Isikoff?

11 A. I don't recall that.

12 Q. So, do you actually recall when the first time you
13 presented a declaration to Mr. Fawcett?

14 A. I don't recall if this was the first time. I recall the
15 sequence of September 24th to the 27th -- sorry, 23rd. I think
16 the order on Yahoo! News was Thursday, September 23rd, that
17 then said the August 30 declarations had to be submitted by
18 Monday, September 27. So either that night or maybe the next
19 morning I sent an e-mail to everybody, we are going to have to
20 provide the declarations, here is what we worked on, here is
21 everybody's draft. You have the e-mail. You know what it
22 says. It has to be 100 percent accurate under penalties of
23 perjury. Give me any edits, I will call you to discuss. Some
24 of them had to be wet signatures because they were nonlawyers.

25 I was home because I had a teenager who tested

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Benett - Cross

1 positive for COVID and I had an unvaccinated younger kid who
2 had to quarantine for 14 days, so I couldn't go to the office.
3 Anyway, the Thursday or Friday communication was, we have to
4 make sure we can get this all done over the weekend and submit
5 it on Monday.

6 Q. Just so I understand the sequence of events, the court
7 issues an order denying Yahoo! News' motion to limit the scope
8 of the declarations. After that order comes out, you prepare
9 the declarations, and it's between that date and the 27th when
10 you first approach Mr. Fawcett and show him the draft
11 declaration?

12 A. I don't think that's entirely correct because I had started
13 declarations prior to the September 23rd order.

14 Q. All I am trying to figure out is when you first showed Mr.
15 Fawcett the declaration.

16 A. No. I just said that I had started the declarations. I
17 don't know that that is the same time that I showed Fawcett his
18 declaration.

19 Q. Fair enough. The first time you showed Mr. Fawcett a
20 declaration was after the court denied Yahoo! News' motion?

21 A. I can't recall. I know by that time everybody had what I
22 thought would be a final declaration in hand. So from August
23 30 on, I knew we would be preparing these declarations. I
24 talked to everybody. I worked on the declarations. I don't
25 know if I had all of them drafted before the 23rd, but I

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Benett - Cross

1 certainly didn't start on the 23rd. I don't recall if I gave
2 John Fawcett a draft of his before the 23rd or not. Certainly,
3 by September 24th, I would have sent it to him.

4 Q. But prior to September 23rd, you don't recall sitting here
5 today actually presenting a draft to Mr. Fawcett and Mr.
6 Fawcett saying that he would sign a declaration saying that he
7 had not sent the transcript to Mr. Isikoff?

8 A. That's correct. I do not recall that conversation.
9 Obviously, everybody knew before that, because of the August 30
10 order, we would be doing declarations. I spoke to everybody
11 about their declarations. I had no reason to believe prior to
12 that that John Fawcett was not going to sign his declaration.
13 He gave me no indication that he had any concern about the
14 declaration I was preparing for him.

15 Q. After you showed him the declaration that you prepared,
16 which actually said that he did not send the transcript to
17 Mr. Isikoff, did he tell you that he would sign that
18 declaration?

19 A. So, on September 27th, I had called John a couple of times
20 over the weekend because I had most of the signed declarations
21 back already. I did not yet have his. Like I said, I had a
22 seven-year-old in remote school, a quarantined teenager. I did
23 not want to wait for Monday morning. So my recollection is
24 that I contacted John over the weekend to try to get the signed
25 declaration. I know I did not hear from him about that.

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Benett - Cross

1 Q. He just never responded to your calls?

2 A. I don't remember if it was a text or a call or if it was
3 more than one call. I feel like I called him twice and got his
4 voice mail. He has a voice mail and when it picks up, it
5 sounds like he is there on the phone. It says, Hey, it's John,
6 and then you start talking and it's a voice mail. I know that
7 I got that voice mail at least once, maybe twice. I left
8 messages. I know the message was, let me know if you have any
9 concerns or changes. I just need to get this done before
10 Monday.

11 On Monday morning --

12 Q. This is the 27th?

13 A. The 27th. I had prepared a cover letter to cover all the
14 declarations. I had wanted to at the time address some of what
15 I had felt were unfair suggestions that the Kreindler firm was
16 behind the leak. I had for two and a half months been
17 confident that we had nothing to do with it. I was putting all
18 the documents together. I was working with my secretary who I
19 think was remote that day as well. And I got a call around 10
20 or 10:30 in the morning from John Fawcett who said to me, I
21 can't sign my declaration.

22 Q. Now, before he called you at 10:30 in the morning saying he
23 can't sign the declaration, had he ever told you before that
24 that he would sign the declaration?

25 A. I don't know if he used those words. I certainly had no

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Benett - Cross

1 reason to -- he never gave me any indication that he wouldn't.
2 From August 30 on, we knew that we had to submit a declaration,
3 including one from him. He knew that I was preparing them. I
4 had spoken to him about preparing them. He never did anything
5 to suggest to me that he would do anything other than sign and
6 return it. I think I even made sure he had a printer at home
7 because he would have to do a wet signature. I even made sure
8 he had a printer at home so that he could print it and scan it
9 and send it back to me.

10 Q. OK. So you just don't remember whether he told you
11 beforehand that he explicitly told you that he would not sign
12 the declaration?

13 A. I can tell you --

14 Q. You have an impression, but you don't remember
15 specifically?

16 A. He never told me he would not sign the declaration until
17 10:15 on Monday, September 27th. Up until then, he may not
18 have said, yes, I will sign it. I feel like we probably had a
19 conversation where he said no problem. I don't know what he
20 was thinking that weekend. I don't know what he was thinking
21 for the last two months. I don't know what was going through
22 his mind. But every indication, leading up to 10:15 on Monday
23 September 27th, was that I was getting a signed declaration
24 from John Fawcett that said, not only I didn't leak it, but I
25 have no idea who leaked it. Because we didn't know until that

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Benett - Cross

1 Monday that it had come from John Fawcett.

2 Q. Did he tell you how he sent it to John Isikoff?

3 A. He did eventually, yes.

4 Q. Did he tell you on the 27th?

5 A. He did not.

6 Q. Did you ask him?

7 A. The 27th --

8 Q. If you can answer my question. Did you ask him?

9 A. Let me think about it for a moment. Because the 27th was a
10 very wild day, trying to go back and make sure that we hadn't
11 missed something, completely reversing our position with the
12 court, to which we now knew we had to that day, and as quickly
13 as possible, bring to her attention that the breach had come
14 from John Fawcett. I was busy changing everybody's declaration
15 because I could no longer have anybody say that we didn't know
16 who sent the declaration. I was worried we might have missed
17 something so I was talking to other folks about the search that
18 we had done. I was --

19 Q. Can you just focus on my question, please? Did you ask him
20 how he sent it?

21 A. I don't think I asked him that day, but given everything
22 else that was going on, I don't recall. I feel like if I had
23 asked him that day, it would have been in what I submitted that
24 day.

25 Q. So sitting here today, you don't recall doing that?

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Benett - Cross

1 A. I don't recall if it was that day. I know that on
2 September 30, I had a long conversation with him about how he
3 did it.

4 Q. Did you ask him whether he had disclosed to Mr. Isikoff
5 other information, including what happened at the Bayoumi and
6 Thumairy deposition?

7 A. He told me on the 27th that he had never done anything like
8 that before.

9 Q. Did you ask him about the specific reference in
10 Mr. Isikoff's article about the Bayoumi and Thumairy deposition
11 and what occurred?

12 A. I did not.

13 Q. Did you ask at that point whether he had conferred with
14 counsel?

15 A. I don't think I did.

16 Q. Did you learn that he had conferred with Liz Crotty at some
17 point about this issue?

18 A. The first time I learned that he had spoken to Liz Crotty
19 over the course of that summer was when I looked at the call
20 logs.

21 Q. When did you look at the call logs?

22 A. Whenever they were produced in the context of this.

23 Q. So sometime this week was the first time?

24 A. Well, I mean, I guess it would have been last week.

25 Q. This week?

LB2H9112

Benett - Cross

1 A. Today is Tuesday.

2 Q. You're right. I think it was last week.

3 So on the 27th you did not know that Mr. Fawcett had
4 not disclosed to you that he had been conferring with legal
5 counsel?

6 A. I did not. I'm assuming from the privilege log and your
7 description. I shouldn't say confer with counsel. I didn't
8 know that he had a call with Liz Crotty.

9 Q. When is the last time you spoke with Liz Crotty?

10 A. There is a weekend in October, I was out in Oregon where my
11 family is, and I got a call from Liz, who I am friendly with,
12 and I had not spoken with her since the primary election. She
13 called me. I wished her my condolences on the loss. We
14 happened to know several other people who were candidates for
15 the DA's election so we had a conversation about that. Then
16 she asked me -- she told me that John had reached out to her,
17 and she asked me if I thought she had a conflict of interest in
18 representing him. I said, I really can't talk to you about
19 that. I suggested she call Emily, and I don't know if she did.

20 Q. You said that was in October that you ran into her?

21 A. I didn't run into her. It was a phone call, and it would
22 have been whatever that fall holiday weekend.

23 Q. Say that again.

24 A. It would have been that fall holiday weekend.

25 Q. In early October?

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Benett - Cross

1 A. Whatever the three-day weekend is in October.

2 Q. She told you at that point in time that Mr. Fawcett had
3 reached out to her about legal advice?

4 A. So, as soon as she said John's name, I told her I couldn't
5 talk with her about it. She said all she wanted to know if I
6 thought she had a conflict of interest. I said, I can't talk
7 to you about that. I don't know if she called Emily. I don't
8 know if she spoke with anybody else.

9 Q. Let's look at 56J. This is Mr. Fawcett's declaration.

10 Now, Ms. Bennett, you and Mr. Pounian actually drafted
11 this declaration, correct?

12 A. I formatted this. September 27, John had the declaration
13 that I had drafted.

14 Q. Can you say that again?

15 A. September 27, that morning, John had the declaration I had
16 drafted. After he called me, obviously, we could not submit
17 what I had drafted for him. He sent me a document that he
18 wrote, as far as I know. I certainly wasn't involved in
19 writing it.

20 Q. I don't need the chronology now. I am just asking you, did
21 you draft his declaration in front of you?

22 A. I formatted it. I did not write the words.

23 Q. Did Mr. Pounian write the words?

24 A. I don't know.

25 Q. Let's take a look at Exhibit 108, please.

LB2H9112

Benett - Cross

1 Exhibit 108 is an e-mail. I will represent to you
2 that the metadata says that it's from Mr. Kreindler to yourself
3 and Ms. Bennett on September 27, 2021, at 12:20.

4 MS. KIRSCH: I am sorry. You may have misspoke.
5 Mr. Shen may have misspoke. What does the metadata say?

6 MR. SHEN: It's from Mr. Fawcett. I'm sorry if I
7 misspoke. It's from Mr. Fawcett.

8 MS. KIRSCH: I will just state for the record I don't
9 know what the metadata says. We have produced another version
10 of this document that has the "from" line. I don't know why
11 that came up the way it did.

12 THE COURT: OK.

13 MR. SHEN: We are going to move this into evidence.

14 THE COURT: Any objection?

15 MS. KIRSCH: I don't have an objection. There is
16 another copy of this that is a complete document.

17 THE COURT: Accepted.

18 (KSA Exhibit 108 received in evidence)

19 Q. This is an e-mail to you and Mr. Pounian. 108A is the
20 attachment that is referenced at that declaration.

21 Is this the declaration that Mr. Fawcett had drafted
22 and sent to you and Mr. Pounian?

23 A. I don't see 108A.

24 THE COURT: Can you put up A.

25 There we go.

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Benett - Cross

1 Q. Do you recognize this as the declaration that Mr. Fawcett
2 drafted himself and sent to you?

3 A. Yes, that looks like it.

4 Q. If we focus on the first paragraph there, he says that he
5 had sent a redacted portion of the transcript to Mr. Isikoff.
6 Do you see that?

7 A. Yes.

8 Q. And he says that the redacted portions relate to the
9 sections of the deposition which were taken subject to the FBI
10 protective order. Do you see that?

11 A. Yes.

12 Q. So he says that he sent essentially the entire transcript,
13 except for portions which were redacted for the FBI protective
14 order, correct?

15 A. I don't know.

16 Q. I am just asking what the language says.

17 A. The language says the redacted portions related to the
18 sections of the deposition which were taken subject to the FBI
19 protective order, and irrelevant to the issue at hand, evidence
20 of Jarrah's use of child pornography.

21 Q. Ms. Bennett, there is nothing in this -- if we can look at
22 the entire screen -- there is nothing in this draft declaration
23 that he sent you stating his personal motivations, his family
24 motivations, for the leak, correct?

25 A. No, I don't see any of that there.

LB2H9112

Benett - Cross

1 Q. Let's look at Exhibit 109. This is an e-mail from Mr.
2 Pounian to yourself, September 27, 1:41 p.m.

3 109A is the attachment, which we will show on the
4 screen in a minute.

5 MR. SHEN: We are going to move this into evidence as
6 well.

7 THE COURT: Any objection?

8 MS. KIRSCH: No objection.

9 THE COURT: Admitted.

10 (KSA Exhibit 109 received in evidence)

11 Q. If we focus on 109A, did Mr. Pounian completely rewrite the
12 declaration?

13 A. I don't know.

14 Q. Do you know if he starts from scratch and wrote on a new
15 Word document what is appearing on 109?

16 A. I don't even know if Steve wrote this. All I know is that
17 he sent it to me.

18 Q. You didn't ask him?

19 A. I talked to John after I got the final draft.

20 Q. My question is, did you ask Steve Pounian if he wrote this?

21 A. No.

22 Q. Now, you received the declaration that Mr. Fawcett had sent
23 you earlier in the day, correct?

24 A. Yes.

25 Q. And you read it, correct?

LB2H9112

Benett - Cross

1 A. Yes.

2 Q. Then you read this declaration that Mr. Pounian had sent
3 you, correct?

4 A. Yes.

5 Q. Did it appear to you at that point that Mr. Pounian had
6 drafted the entire declaration from scratch?

7 A. I don't know. I don't know if Steve drafted it. I don't
8 know if John worked on it. I don't know if John talked to
9 other people and then redrafted it. I just don't know how this
10 all unfolded. I don't think it looks like Steve completely
11 redrafted it.

12 Q. Let's look at the draft that Mr. Pounian sent to you and to
13 nobody else.

14 He writes here in the first paragraph that the
15 redacted portions of the deposition I sent to Michael Isikoff
16 were limited to Jarrah's possession of child pornography.

17 Do you see that?

18 A. Yes.

19 Q. That's not what Mr. Fawcett said in his declaration that he
20 drafted, right?

21 A. I guess then that, since we obviously didn't know what had
22 gone to Isikoff, maybe that was something -- I think that we
23 had believed that it was from the article.

24 Anyway, what was the question?

25 Q. The question is, Mr. Pounian had changed the language in

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Benett - Cross

1 the declaration and he now says that the transcript that was
2 sent was limited to those images, correct?

3 A. I just don't know that Steve did this. You can ask him.

4 Q. You didn't ask him why that language is so dramatically
5 different than the version Mr. Fawcett sent over?

6 A. I did not.

7 Q. And Mr. Pounian's version that he sent you at the bottom
8 talks about a personal interest because Mr. Musaed Al Jarrah,
9 it says that he was a diplomat in Morocco.

10 Do you see that?

11 A. Yes.

12 Q. And that personal interest doesn't appear in Mr. Fawcett's
13 declaration that he drafted, correct?

14 A. It doesn't. I mean, I knew that John was --

15 Q. If you could just answer the question, Ms. Bennett.

16 Did you know that Mr. Pounian had inserted and drafted
17 that language?

18 A. I don't know that Steve did that.

19 Q. We can look at Exhibit 110, please.

20 This is an e-mail chain between yourself and Mr.
21 Pounian, 1:47 p.m. You are responding to the prior draft that
22 Mr. Pounian has sent you. 110A is the actual exhibit.

23 MR. SHEN: I am going to move this into evidence.

24 THE COURT: Any objection?

25 MS. KIRSCH: No objection.

LB2H9112

Benett - Cross

1 THE COURT: It's accepted.

2 (KSA Exhibit 110 received in evidence)

3 Q. You actually write back to Mr. Pounian and say "it's good,"
4 right?

5 A. It was totally consistent with what I knew John's concerns
6 had been about Jarrah.

7 Q. I am just asking you what the document says. You write
8 back to him and says "it's good," right?

9 A. I thought it was a good reflection of what I knew John's
10 concerns had been, yes.

11 Q. And then you say, "I have also made some edits to the
12 declaration. See the attached." Right?

13 A. Yes.

14 Q. If we look at the attachment, you have elaborated on Mr.
15 Fawcett's personal interest in why he leaked the transcript.
16 That's your language that you inserted there, right?

17 A. Well, I have to see it first.

18 Oh, you know what --

19 Q. Is that your language that you inserted?

20 A. Andy, I typed the words. It's not really my language
21 because I knew from my conversations with John that his concern
22 with Jarrah being in Morocco was based in part on his
23 background in global humanitarian work.

24 Q. I am not asking if it's true or not. I am just asking if
25 you drafted the language.

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Benett - Cross

1 A. You asked me if it was my words. I did type them, but I do
2 believe that I took that based on what I had learned from John.

3 Q. Now, we know Mr. Fawcett's declaration that he sent over
4 had nothing about his personal interests. And then you and Mr.
5 Pounian are exchanging drafts where you try to justify his
6 leak, correct?

7 A. So, over the course of September 27, there were many
8 conversations with John. The first was the one that I
9 described where I learned --

10 Q. If you could just answer my question, Ms. Benett. Were you
11 trying to justify Mr. Fawcett's leak to Isikoff by drafting the
12 language in his declaration stating that he had a personal
13 interest?

14 A. First of all, there is no justification for the leak.
15 There was no effort to justify this. It was an explanation. I
16 couldn't understand why he would have done it. And this to me,
17 when I had further conversations with John that day, it in no
18 way excuses what he did, but it provided context to me to
19 understand what he believed he had to do.

20 Q. That may be the case, but you are actually inserting that
21 purported context in a declaration that is going to be
22 submitted to the court, right?

23 A. I was working with John and trying to get it finalized for
24 the court on Monday, September 27.

25 Q. Let's look at Exhibit 112, please.

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Benett - Cross

1 Exhibit 112 is an e-mail from you to Justin Green at
2 the Kreindler firm. It's dated September 27 at 2:15. It
3 attaches a draft of the Jarrah declaration.

4 Who is Mr. Green?

5 A. Justin is sitting there to your left.

6 Q. Who is he?

7 A. He is a partner at my law firm.

8 Q. Is he a managing partner?

9 A. Well, he would like to think so.

10 Q. Was he consulted on this leak issue?

11 A. As soon as I found out -- sorry, Noah. As soon as I found
12 out about the leak, I called Justin and I alerted the partners.

13 Q. Did you tell Mr. Green that you and Mr. Pounian were
14 drafting the language of Mr. Fawcett's declaration that would
15 be submitted to the court?

16 A. I disagree with that because I wouldn't say that we were
17 drafting the language.

18 Q. Hold on. You told us that you didn't know if Mr. Pounian
19 drafted the language, right? That's what your testimony was?

20 A. Could you read back the other question? The question you
21 asked, Andy, that I am trying to answer is, did I tell Justin
22 that Steve and I were drafting this language.

23 Q. That's a yes or no question. Did you tell him that?

24 A. No.

25 Q. Did you tell Mr. Green that you had drafted the portion of

LB2H9112

Benett - Cross

1 the language attempting to justify the breach of the protective
2 order?

3 MS. KIRSCH: Objection. We already had testimony that
4 she says there is no justification. Mr. Shen is trying to put
5 words back in her mouth again. It's inappropriate.

6 THE COURT: Mr. Shen, can you rephrase the question,
7 please?

8 Q. Did you tell Mr. Green that you had drafted the portion of
9 the declaration that attempts to explain why Mr. Fawcett had a
10 personal interest in the leak?

11 A. I told Justin what I learned that day about John's
12 motivations. I told Justin --

13 Q. That's not the question. Did you tell him you drafted that
14 portion of the declaration?

15 A. I don't really agree with the characterization. But since
16 the answer is I don't know, or I don't recall, I will just go
17 with I don't recall.

18 Q. Did Mr. Green provide you edits to the declaration?

19 A. No.

20 Q. Did he provide any commentary?

21 A. I mean, honestly, I am -- obviously, I did send it to
22 Justin. I think I sent it to him so the partnership knew what
23 was going to be submitted.

24 Q. You don't recall if Mr. Green gave you any comments?

25 A. I can't imagine we would get into that.

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Benett - Cross

1 Q. Did he sign off on the fact that it was OK to submit this
2 declaration to the court?

3 A. I don't think I asked for permission.

4 Q. Exhibit 118, please.

5 Exhibit 118 is an e-mail between you, Mr. Fawcett, and
6 Mr. Pounian. Mr. Pounian is sending back a draft of the
7 declaration at 6:53 p.m. The attachment is at 118A.

8 Do you see that?

9 A. I don't see the attachment.

10 Q. Now, do you recall that after you and Mr. Pounian had gone
11 through and drafted portions or revised portions of the
12 declaration, you then sent that draft back to Mr. Fawcett?

13 A. Yes. Obviously, what John sent me initially I had to
14 format in any event. Certainly, we would have sent it to him.
15 We had to get back his signature.

16 MR. SHEN: I am going to move this document in
17 evidence.

18 MS. KIRSCH: No objection.

19 THE COURT: Accepted.

20 (KSA Exhibit 118 received in evidence)

21 MR. SHEN: Can we look at Exhibit 121.

22 I'm sorry. Exhibit 120, please.

23 Q. Exhibit 120, at 7:34 p.m. Mr. Fawcett sends an e-mail back
24 to you -- back to Mr. Pounian and attaches a declaration with a
25 few redlines. I notice that you're not on the top e-mail here.

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Benett - Cross

1 Did you receive a copy of the edits that Mr. Fawcett
2 had made to the declaration?

3 If we can look at 121, that's the attachment.
4 A. I don't recall, but this looks like the final version so I
5 must have.

6 MR. SHEN: I am going to move these two exhibits into
7 evidence.

8 THE COURT: Any objection?

9 MS. KIRSCH: 122 and 122A?

10 MR. SHEN: It's 120 and 121.

11 MS. KIRSCH: No objection.

12 THE COURT: It's admitted.

13 (KSA Exhibits 120 and 121 received in evidence)

14 Q. Focusing on the actual redlines that Mr. Fawcett sent back,
15 he takes out language that says, "Until today, I told Kreindler
16 & Kreindler that I did not know how Mr. Isikoff had obtained
17 the transcript."

18 Do you see that?

19 A. Yes.

20 Q. Did you ever ask him why he took out that language?

21 A. I don't know if I talked to him again. I told him we
22 needed the computer, but I am not sure that I even spoke with
23 him again. What time was that e-mail?

24 Q. This was at 7:34 p.m.

25 A. I probably didn't even speak with him again.

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Benett - Cross

1 Q. Is it curious to you that Mr. Fawcett didn't want to tell
2 the court that, I had told Kreindler & Kreindler that I did not
3 know how Michael Isikoff had obtained the transcript?

4 A. I don't know if he took that out. I know that I asked
5 Steve and Duke to confirm that he had been -- that Fawcett had
6 been asked directly and that that was an accurate statement.
7 And we believed that was an accurate statement. I guess
8 Fawcett took it out. I don't know why.

9 Q. You're not aware of anybody asking Mr. Fawcett why he took
10 out that language?

11 A. I don't think I did. I don't know if anybody else did.

12 Q. You didn't talk to Mr. Pounian about this edit?

13 A. I don't know if we talked about that edit. We definitely
14 talked about Steve -- I know back in -- I had a conversation
15 with Steve who was working closely with John. I had a
16 conversation with Steve in July, and I was on the West Coast,
17 about asking John directly. He told me he asked John if he had
18 released the transcript. John told him, no. So when this came
19 out, I may have said to Steve, am I remembering this correctly?
20 Didn't John tell us directly that he didn't provide the
21 transcript and he didn't know how Mr. Isikoff had gotten the
22 transcript? My recollection is that Steve had confirmed what I
23 understood Fawcett to have said before, so I don't know why he
24 would have taken that out.

25 Q. You don't know if Mr. Pounian asked Mr. Fawcett?

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Benett - Cross

1 A. I don't know. I don't recall if we talked about whether
2 Steve was talking about that with John. I imagine they had
3 talked about that, but I don't recall.

4 Q. If we can just scroll down to paragraph 4. You see that
5 there is language that says, "I had a personal interest."

6 Do you see that?

7 A. Yes.

8 Q. That's the language that we looked at in the prior exhibits
9 that you and Mr. Pounian had drafted, correct?

10 A. What we looked at in the prior Fawcett draft, yes.

11 Q. That's the language that was ultimately submitted to the
12 court, correct?

13 A. It looks like it.

14 Q. Now, let's look at Exhibit 58, please. This is your
15 September 30, 2021 letter to the court.

16 You drafted this letter, correct?

17 A. Yes. This is the September 30 letter, yes.

18 MR. SHEN: We are going to move this document into
19 evidence as well.

20 MS. KIRSCH: No objection.

21 THE COURT: Admitted.

22 (KSA Exhibit 58 received in evidence)

23 Q. This letter actually attaches another declaration from Mr.
24 Fawcett, correct?

25 A. I believe so.

LB2H9112

Benett - Cross

1 Q. Did you and Mr. Pounian draft the second declaration that
2 Mr. Fawcett had prepared?

3 A. My recollection of the September 30th one is that I was on
4 the phone with John Fawcett who walked me through what he had
5 done. I don't have the declaration in front of me, if you're
6 going to ask me questions about it. My recollection is that I
7 was in the office that day. I was on the phone, I believe I
8 was on the phone with John Fawcett. He walked me through what
9 he had done. I typed up that supplemental declaration and sent
10 it to him to look at.

11 Q. You were the one who actually drafted the declaration, you
12 drafted the language in the declaration, correct?

13 A. I disagree with that. I literally on the phone had it on
14 speaker so I could type what he was telling me. Yes, I typed
15 it, but I didn't know anything about how he had done this. He
16 gave me the language. He told me what he did. I had questions
17 and I asked him things like -- I didn't even know about
18 ProtonMail before September 30. It was a long call to try to
19 understand what he did. And, yes, I typed it.

20 Q. Did you or anyone else at the Kreindler firm purport to
21 give Mr. Fawcett any legal advice with respect to his September
22 27 declaration or his September 30 declaration?

23 A. No.

24 Q. Did you suggest to him at any point in time that he should
25 retain counsel in connection with those two declarations, not

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Benett - Cross

1 later, but just in connection with those two?

2 A. I don't recall doing so. My answer is no.

3 Q. Did you explain to Mr. Fawcett at the time that his
4 interest and the firm's interest may not be aligned?

5 A. There was a conversation where he was apologizing and
6 deeply upset. I did not have that sort of formal conversation
7 with him. It wasn't until the court's October 4 order that I
8 said to him, you should get your own lawyer.

9 Q. You had no discussions with him at all about any potential
10 conflicts of the firm's interest versus his interest, correct?

11 A. I guess the reason I bring up the conversation where he was
12 upset and apologizing, in response to your question, is that it
13 felt to me like a real understanding on everybody's part that
14 not only was this a really big deal, but that this now
15 potentially irrevocably would change the relationship we had
16 with an individual who had been working on the case with the
17 firm for the families for the last 20 years. And that to me,
18 to me that conversation was about how our paths were branching
19 differently.

20 Q. My question to you was just, did you explain that there was
21 a conflict of interest and that he may be hurting his own
22 interest in supporting the firm's interest in submitting these
23 declarations?

24 A. We did not have a conversation about that.

25 Q. Did you discuss with him the court's prior actions in

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Benett - Cross

1 connection with the firm's breaches of the protective orders?

2 A. Are you referring to the October 17 -- I'm sorry, the 2017?

3 Q. I am referring to any time that someone has brought to the
4 court's attention an alleged breach of the protective order by
5 the Kreindler firm, did you discuss with Mr. Fawcett what the
6 court did in connection with those?

7 A. To be clear, I want to make sure I am not missing something
8 the court might have done. My understanding is there was one
9 finding of a breach in this case.

10 Q. I am just asking if you discussed that with Mr. Fawcett?

11 A. What the court had done in 2017?

12 Q. Let's start there. Did you discuss that with Mr. Fawcett?

13 A. I did not.

14 Q. Did you discuss with Mr. Fawcett that the Department of
15 Justice had made the assertion that Mr. Kreindler had violated
16 the protective order in connection with his speech at Dartmouth
17 and what the court's reaction to that was?

18 A. Did I discuss that with John Fawcett between September 27
19 and September 30? No, I did not.

20 Q. Mr. Fawcett agreed to submit a declaration on the 27th,
21 where he admitted to being the source of the leak and to
22 violating the protective order. Why did he agree to submit a
23 second declaration?

24 MS. KIRSCH: Objection. That calls for speculation.

25 Q. Let me ask a new question. Did you urge Mr. Fawcett to

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Benett - Cross

1 submit a second declaration?

2 A. I just want to go back to, you said that he had agreed to
3 submit a declaration. On September 27, I did say to him that
4 he had to decide what to do. It was clear that there were
5 serious -- there were going to be serious ramifications about
6 this after our first conversation. I didn't know whether he
7 would give us a declaration or not. I actually for some period
8 that morning was figuring out what and how to tell the court
9 what had happened without being able to give a declaration from
10 Fawcett.

11 So, in the course of that September 27, one of those
12 September 27 conversations, I think that probably there was a
13 part of the conversation with John that was, if you sign a
14 declaration, there is going to be fallout. I didn't want -- I
15 couldn't tell him not to sign the declaration, but I also
16 needed to make sure that he understood the seriousness,
17 obviously the seriousness of what he had done already, but the
18 seriousness of what was going to happen next.

19 Q. What did you tell him the fallout would be?

20 A. I think I said, this is a really big deal, and if you sign
21 the declaration, you have to accept the court is going to do
22 something.

23 Q. Do you know why he agreed to sign the second declaration?

24 A. So, the first declaration he gave me sua sponte. The
25 second declaration, in our September 27 letter, we told the

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Benett - Cross

1 court -- it was a crazy day. We couldn't do everything we
2 wanted to do by the end of September 27. In the letter we said
3 that we would provide the court with an update shortly about
4 the next steps. I don't think there was an order -- maybe
5 there was -- from the court at that point to describe how he
6 had done it. One of the things that we had to do was to
7 reconstruct what had happened in leaking that transcript and
8 why we hadn't captured it during our search. Because we felt
9 confident up until September 27, given our firm's practices,
10 given what we were able to determine from our systems, given
11 the statements that everybody who had worked with us for
12 anywhere from five to 20 years and had never done anything like
13 this before, until 10 a.m. on September 27 we believed it was
14 not from us. And it came from Fawcett, and we needed to figure
15 out how he could have done that without us ever having known.

16 Q. Ms. Bennett, did you make any promises to Mr. Fawcett if he
17 submitted the declaration?

18 A. No.

19 Q. Did you tell him that you would pay for his lawyer?

20 A. No.

21 Q. Is the firm in fact paying for his lawyer?

22 A. I don't know.

23 Q. Did you tell him that you would write to the court and
24 stick up for him for all the great work he did in the 9/11
25 case?

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Benett - Cross

1 A. I didn't say that to him. There is no question about his
2 responsibility and the seriousness of his breach here. It was
3 hard to also at the same time not feel like he needed -- who he
4 was needed to be explained in some way, and the work he had
5 done in the case for 20 years, and the fact that he had never
6 done anything like this before. I definitely didn't say we are
7 going to write and we are going to stick up for you to the
8 court. There was a letter that we wrote, and I don't remember
9 if it was the September 27 letter or the later letter, but it
10 did feel incumbent to me to recognize, not to minimize his
11 violation of the protective order, but to recognize the
12 substantial work that he had done for our clients, for the 9/11
13 family members, from 2002 until 2021. And that was important
14 for us to say because he --

15 (Continued on next page)

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LB2H9114

Benett - Redirect

1 Q. And so, Ms. Benett, you stuck up for Mr. Fawcett in the
2 letter you submitted to the Court on September 30, right?

3 A. We felt like we needed to say who he was.

4 Q. Right. And you're sticking up for him again here as you're
5 testifying, correct?

6 A. He breached a protective order. He's the subject of -- one
7 of the subjects of the Court's investigation. I mean, not sure
8 what you mean by -- I will say, he's been a tireless advocate
9 for the family members. He was on phone calls every single
10 week with them. He did so much work in building this case and
11 developing the evidence against the Kingdom of Saudi Arabia, it
12 would not be fair for his entire life to be reduced to this
13 mistake no matter how egregious it is.

14 Q. And you were here yesterday when Mr. Kreindler gave his
15 emotional testimony about Mr. Fawcett and he stuck up for him
16 then as well, correct?

17 A. I was -- I was here, and I did listen to Mr. Kreindler.

18 MR. SHEN: I have no further questions. Thank you.

19 REDIRECT EXAMINATION

20 BY MS. KIRSCH:

21 Q. Good afternoon, Ms. Benett.

22 Sorry. I just need one minute, your Honor.

23 THE COURT: That's fine.

24 Q. Can you take the Kreindler book and put that in front of
25 you, Ms. Benett. We'll do some of this in reverse

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Benett - Redirect

1 chronological order, but we'll just stick with what we were
2 just talking about.

3 Can you turn to tab 52. Can you tell me, can you
4 identify this document?

5 A. Yeah. It's an email chain that starts from me. It goes to
6 several people at the Kreindler firm. And then above that is
7 an email from Steve Pounian to me.

8 MS. KIRSCH: I'd like to move this into evidence.

9 THE COURT: Any objection?

10 MR. SHEN: No objection.

11 THE COURT: Admitted.

12 MS. KIRSCH: OK. That's tab 51.

13 THE COURT: I think that was tab 52.

14 THE WITNESS: Yeah, I'm sorry. I was on 52.

15 THE COURT: I think you had asked us to turn to 52.

16 (Kreindler Exhibit 52 received in evidence)

17 MS. KIRSCH: Oh, sorry.

18 BY MS. KIRSCH:

19 Q. OK. Can you explain to me --

20 THE COURT: Ms. Kirsch, sorry, just so we are clear,
21 were you asking all of us to look at 52 or 51?

22 MS. KIRSCH: 51.

23 THE COURT: I think we all were looking at 52.

24 MS. KIRSCH: I'm sorry, 51.

25 THE COURT: That's OK. Are you at 51 now?

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Benett - Redirect

1 Mr. Shen, any objection to admitting 51?

2 MR. SHEN: No objection.

3 THE COURT: OK. It's admitted as well.

4 (Kreindler Exhibit 51 received in evidence)

5 BY MS. KIRSCH:

6 Q. Ms. Bennett, can you tell me what's going on in this email
7 which is midday on Friday, September 24?

8 A. Yeah. So this was after the September 23 order directing
9 that our declarations be filed by Monday, and I was circulating
10 to everybody who had been told they would need to do -- sign a
11 declaration. The language of the Court's order shows what the
12 declarations would contain and making sure everybody would be
13 available to review, finalize review, sign, and get back to me.

14 Q. At this point was it primarily your responsibility to
15 prepare these declarations to be filed in response to the
16 Court's order?

17 A. Yes.

18 Q. Did you take any steps at this time to satisfy yourself
19 that the declarations that would be submitted by all of these
20 individuals were complete and accurate?

21 A. Yes.

22 Q. Can you describe what you did.

23 A. Sure. So I had spoken to everybody individually previously
24 to describe generally what the content of the declarations
25 would have to say -- state. I -- especially for the

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Benett - Redirect

1 nonlawyers, I discussed what it meant to sign under penalty of
2 perjury. I had told them that I'd try to get them -- that I
3 would -- I asked them questions to make sure that I knew the
4 correct answers to the Court's direction. And then with John
5 Hartney, I had a longer conversation with Hartney because his
6 was going to have to focus on the Kreindler systems and stuff
7 that I wasn't necessarily as familiar with.

8 Q. Why did you have a longer conversation with Mr. Hartney?

9 A. Because I wanted to make sure that I could -- that he and I
10 could work on his declaration to accurately describe the firm's
11 practices and also the tech side, and it felt -- so in my
12 communications with John, that was just more efficient and
13 effective to do in person.

14 Q. Then let's take a look at tab 52, please. Can you identify
15 that document?

16 A. Yeah. That's a response from Steve Pounian to me to the
17 email at tab 51.

18 MS. KIRSCH: I'd move that into evidence.

19 THE COURT: I think we just did that because we had a
20 mix-up.

21 MS. KIRSCH: You're right. You're right. You're
22 right. I apologize.

23 THE COURT: That's all right.

24 BY MS. KIRSCH:

25 Q. Can you explain here what -- Mr. Pounian is offering to

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Benett - Redirect

1 help you with these declarations, is that correct?

2 A. Yes.

3 Q. Did you have any reaction to -- it's the second to last
4 sentence, he says: I'm also concerned about sharing what's
5 redacted name with KSA since he is living abroad. Are we
6 planning to file his declaration with the Court only *ex parte*?

7 Can you explain what your reaction to that statement
8 from Mr. Pounian was?

9 A. Well, I understood what his -- I understood his concern
10 both from the work product perspective but also from just the
11 witness safety perspective. I mean, that's what I understood
12 that to be addressing. Is that what your question is?

13 Q. Yes.

14 A. OK. So, yes, we were -- that consultant was living in a
15 place where we had concerns about his safety if we were to
16 reveal his name to anybody but the court -- or at least reveal
17 his name to the defendants.

18 Q. Can you expound a little bit on what the work product
19 concern was. You said there were two types of concerns.

20 A. Right. So the work product was both producing his name and
21 his identity and the -- you know, the fact of his -- where he
22 was also, to the extent that that could bear on work that he
23 was doing in connection with the case and thereby reveal work
24 product.

25 Q. Is it fair to say that the Kreindler firm has taken the

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Benett - Redirect

1 lead in the factual investigation portion of the case against
2 KSA?

3 A. That is definitely fair to say. It was our investigators
4 who had developed most of the facts in interviews and located
5 the witnesses that were not those folks that the Kingdom
6 produced. For example, the plaintiffs' witnesses were
7 individuals that our investigators were able to track down,
8 talk to, and have agreed to come and testify, for example.

9 Q. And is that part of the reason that the Kreindler firm was
10 focused on answering the Court's questions but not voluntarily
11 revealing more information than it absolutely needed to for the
12 KSA?

13 A. We had -- we had genuine concerns because we, even as we
14 speak, have people who are working on the case, and we were --
15 wanted to take every precaution possible to protect our active
16 work product. We had -- you know, we had concerns. I don't
17 want to sound histrionic, but the Jamal Khashoggi incident was
18 something that made us worried. He had approached one of our
19 team members and expressed an interest in working with
20 Kreindler and the 9/11 family members. And that day, as I
21 understand it, he spoke with Mohammad bin Salman's brother, who
22 was the ambassador in D.C. at the time, and was thereafter
23 obviously murdered. I don't know if that would have had
24 anything to do with his agreeing to be a witness in our case,
25 but it was certainly something that we were mindful of, whether

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Benett - Redirect

1 it was a question of physical safety of our investigators or
2 our witnesses or whether it was just a question of making them
3 no longer as willing to meet with us and speak with us.

4 Q. Is it fair to say that in the beginning of this process,
5 when some of the other plaintiffs firms came forward
6 voluntarily with declarations, that the Kreindler firm felt it
7 was in a slightly different position in that regard?

8 A. Yes, that is fair to say. We were -- we knew that the
9 other firms had a different approach. We felt like it wasn't
10 appropriate. We also -- we felt confident at the time that
11 there was -- that this hadn't come from our firm, and we wanted
12 to be led by the Court and not by the Kingdom on what we had to
13 provide, and we also wanted to limit our responses to what was
14 asked for. We trusted that if there was more information that
15 the Court needed, we would have a subsequent order.

16 Q. So it's fair to say also that the Kreindler firm has an
17 enormous amount of highly sensitive, highly confidential
18 information of its own that it's handling on a day-to-day
19 basis, is that right?

20 A. That's correct.

21 Q. We've talked a little bit at this hearing about the
22 document management system, and so forth. Can you explain the
23 steps that the firm takes and why it is that you're comfortable
24 that the confidential information that's being handled is, in
25 fact, safe?

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Benett - Redirect

1 A. Yeah. So I'll talk first specifically about the management
2 of information in the 9/11 case. The system that people have
3 heard about over the course of the hearing is called Case
4 Media. The firm has in all -- almost, if not all, of our other
5 cases migrated over the course of the lifetime of this case to
6 it through at least two new software document management
7 systems. We did not migrate the 9/11 case onto those new
8 systems for a variety of reasons. One being that it is -- it
9 is old enough and big enough and we are familiar enough with
10 the way that those documents are managed within Case Media that
11 it would have been fairly disruptive to do so, especially
12 because our newest system was being built out, being trained on
13 it literally in the months leading up to and during the
14 deposition. But even the one that we had before that postdated
15 the development of our document management system on Case
16 Media.

17 Case Media is, I would say, more or less required for
18 all other purposes. So I don't know if there are even any
19 other active cases that have documents that are managed on Case
20 Media. The only individuals who are told how -- again, this is
21 not -- this is not to suggest that as a technical matter, but
22 as a realistic matter, the only people who are directed to the
23 location where the 9/11 materials are maintained are people who
24 were working on the case and who have signed the FBI -- read
25 and signed the FBI protective order and reviewed the MDL

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1 protective order, and we keep a log of those people. My
2 secretary maintains a file with the names of those people.

3 Q. Thank you.

4 In that Case Media system, there are documents that go
5 to and from and are about some of these consultants and sources
6 that the Kreindler firm works with that are treated with the
7 highest sensitivity, is that correct?

8 A. That's correct, yes.

9 Q. So fair to say that this highly sensitive information of
10 yours is given the same protection as the highly sensitive
11 information or -- yeah, the highly sensitive information that
12 you're receiving from the KSA?

13 A. Yeah, and from the FBI.

14 Q. And from the FBI. OK.

15 So if we go back to tab 52, what did you respond to
16 Mr. Pounian when he offered to give you some help with these
17 declarations over the weekend?

18 A. I don't -- I don't remember if I wrote back to that email.

19 Q. As a general matter, did you accept his offer?

20 A. I think -- yes, I did. I did send him, I think, what I
21 believed were sort of the close to final drafts.

22 Q. Did you take steps at this point to reaffirm that whatever
23 was going to go into this filing to the Court on the 27th would
24 be accurate and complete?

25 A. Yes. So I spent a lot of that weekend with Hartney making

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1 sure -- since I was -- since I sort of jumped in on this, I
2 knew that Duke had gotten all the emails, but they were not
3 saved in a single place that was easy for me to access. So I
4 worked with Hartney to make sure -- and in their native format.
5 I didn't want them coming like a forward from September 24 a
6 September 23 email. I wanted the actual original native format
7 emails. I worked with John to put them all in a folder. I
8 looked through all of them. I compared them to what I had seen
9 before. If there was anything -- I think there was at one
10 point I thought that there was an original email that hadn't
11 come up during the search. There was like a reply, reply,
12 original, and I had only the reply and the reply. I was on the
13 phone with John to make sure that I hadn't missed that.

14 So, yes, I was working with John Hartney over the
15 course of the weekend to make sure that all of the
16 communications that were going to go into the exhibit that
17 would be an exhibit to his declaration that would be in
18 response to the Court's direction to produce all communications
19 with Isikoff were in a single place.

20 Q. So let's look at tab 53.

21 So this appears to be an email from Mr. Maloney to you
22 forwarding a bunch of these emails that had been found in the
23 earlier search, is that right?

24 A. Yes.

25 MS. KIRSCH: I'd move this into evidence.

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1 MR. SHEN: No objection.

2 THE COURT: Accepted.

3 (Kreindler Exhibit 53 received in evidence)

4 BY MS. KIRSCH:

5 Q. So can you explain to me what's happening here.

6 A. So this is probably in response to me saying to Duke, you
7 know, I need all the emails. And then I think after this is
8 when I decided I wanted to go back to Hartney and get the
9 native ones directly from the system, not just the forwards to
10 me.

11 Q. So let's look at tab 54. Can you identify this document?

12 A. Yes. So this is -- this is, again, Duke forwarding other
13 emails to me that Hartney had found during the course of his
14 investigation.

15 MS. KIRSCH: I'd move this into evidence.

16 MR. SHEN: No objection.

17 THE COURT: It's accepted.

18 (Kreindler Exhibit 54 received in evidence)

19 MS. KIRSCH: OK.

20 Q. Also, tab 55, another one of these emails on September 24,
21 can you identify this?

22 A. Yeah. That is another forward from Duke to me of an email
23 that Hartney had filed during his July -- during his original
24 search.

25 Q. OK.

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1 A. During one of his searches.

2 Q. And tab 56 -- I move, sorry, move 55 into evidence.

3 MR. SHEN: No objection.

4 THE COURT: It's accepted.

5 MS. KIRSCH: Thanks.

6 (Kreindler Exhibit 55 received in evidence)

7 THE WITNESS: 56, I had asked you to just send me any
8 correspondence you had with John about the systems and
9 generally.

10 MS. KIRSCH: OK. I move 56 into evidence.

11 THE COURT: Any objection? It's accepted.

12 (Kreindler Exhibit 56 received in evidence)

13 BY MS. KIRSCH:

14 Q. OK. Let's look at tab 57. Can you explain this?

15 A. This is, again, Duke sending to me -- and I was on the
16 original email, but just to have it top of my inbox -- several
17 of the emails that were produced in the course of the
18 investigation.

19 MS. KIRSCH: I'd move 57 into evidence.

20 MR. SHEN: No objection.

21 THE COURT: It's accepted.

22 (Kreindler Exhibit 57 received in evidence)

23 BY MS. KIRSCH:

24 Q. Let's look at tab 58. Can you identify this document?

25 A. Yeah. Yes. This is a cover email from me to Hartney with

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1 the draft of his declaration -- sorry, about a draft, yeah. So
2 I think initially he was just checking in, and then I sent him
3 the draft, and then I sent him a different version.

4 MS. KIRSCH: I'd move 58 into evidence.

5 MR. SHEN: No objection.

6 THE COURT: It's accepted.

7 (Kreindler Exhibit 58 received in evidence)

8 BY MS. KIRSCH:

9 Q. Let's look at tab 61. Do you recognize this document,
10 Ms. Bennett?

11 A. I do. This is an email exchange between Steve Pounian and
12 myself on changes to his declaration, and I can --

13 MS. KIRSCH: I'll move 61 into evidence.

14 THE COURT: Any objection?

15 MR. SHEN: No objection.

16 (Kreindler Exhibit 61 received in evidence)

17 BY MS. KIRSCH:

18 Q. Let's look at it for a moment. Mr. Pounian says to you:
19 "Can't everyone say I have no idea how Michael Isikoff got the
20 transcript?" And then you respond up top.

21 Can you explain to us what's going on with your -- the
22 first sentence of your response?

23 A. Sure. Well, first of all, we couldn't, of course, say that
24 because as of then it was our understanding that nobody would
25 have known -- that nobody did know how Mr. Isikoff got the

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1 transcript. I wasn't sure about adding that because I had
2 genuinely felt like we were being punished for having
3 previously provided what the Court had ordered and that we were
4 being scolded for not doing more, and I will confess that I
5 felt frustrated by that. But it did seem to me, on balance, it
6 was worth adding, since we believed that to be true on
7 Saturday, September 25.

8 Q. If you look at the third paragraph, you write: "I left JF
9 a voice mail earlier to ask him the same things you emailed
10 about."

11 Are those the voice mails or one of the possibly two
12 voice mails you left for Mr. Fawcett over that weekend that you
13 testified about recently?

14 A. Yes.

15 Q. Do you recall again whether you heard back from Mr. Fawcett
16 over that weekend?

17 A. I didn't -- I did not hear back from Fawcett over the
18 weekend.

19 Q. Then you say: "We also need to find out from JPK how many
20 times he talked to Isikoff, if he can recall when, and what
21 they discussed."

22 Do you see that?

23 A. Yes.

24 Q. And you were here in the room when Mr. Maloney testified
25 that he had previously had discussions about that with

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1 Mr. Kreindler, correct?

2 A. Yes.

3 Q. And so why is it that you're saying here we also need to
4 find out from JPK those things?

5 A. I just wanted to be sure before filing this declaration
6 that we -- I wanted to be totally comfortable with what we were
7 filing, and I wanted to be -- I wanted to make sure everybody
8 had reviewed it repeatedly. We were -- although, as is evident
9 in the email, though perhaps irritated, I also took it very
10 seriously, and I did not want to miss, for example, an Isikoff
11 call or email that might have been out there.

12 Q. Then let's look at tab 62. Can you identify this document
13 for us?

14 A. Yes. This is a series of emails about the draft
15 declarations and then the draft declarations behind it.

16 MS. KIRSCH: I'd move this into evidence.

17 MR. SHEN: No objection.

18 THE COURT: It's accepted.

19 (Kreindler Exhibit 62 received in evidence)

20 BY MS. KIRSCH:

21 Q. Now, it says here again on Saturday, up at the top, "Let's
22 talk to Fawcett and Jim tomorrow if possible."

23 Do you see that?

24 A. Yes.

25 Q. So that suggests that you still haven't made contact with

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1 them about the open issues, is that right?

2 A. Correct.

3 Q. Then let's just turn the page to -- the first declaration
4 draft attached is yours, and I'm going to just draw your
5 attention to paragraph 4. Is that the sentence that
6 Mr. Pounian suggested got added in?

7 A. Yes.

8 Q. So here in the draft declarations that everyone's prepared
9 to sign on Saturday is that -- that paragraph 4 appears in your
10 declaration and it appears in this draft declaration of
11 Mr. Fawcett?

12 A. Yes.

13 MR. SHEN: Sorry, Ms. Kirsch, which exhibit are you
14 in?

15 MS. KIRSCH: 62.

16 THE COURT: 62. I think there was a new 62 I
17 received.

18 MS. FREY: Your Honor, can I explain something to
19 Mr. Shen just a second that has to do with just the
20 attachments?

21 MS. KIRSCH: Is this the attachments?

22 MS. FREY: I gave the attachments to someone
23 yesterday. You don't have it in your book at all? Do you need
24 another copy?

25 (Counsel confer)

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1 MR. SHEN: I'm sorry.

2 THE COURT: That's OK. I received a new Exhibit 62.
3 It was put in my binder.

4 MS. KIRSCH: Yes, your Honor. We had given them one
5 as well, but the binder that they're looking at now isn't the
6 one that the new exhibit went into. So we're looking to see if
7 we can get another set.

8 MS. FREY: I can get it now.

9 MR. SHEN: Ms. Kirsch may proceed.

10 THE COURT: OK.

11 BY MS. KIRSCH:

12 Q. All right. So if you look at the next declaration --

13 THE COURT: Sorry. I don't think we actually admitted
14 the document. I take it, no objection?

15 MR. SHEN: No objection.

16 THE COURT: OK. So it's admitted.

17 Go ahead.

18 (Kreindler Exhibit 62 received in evidence)

19 MS. KIRSCH: Thank you.

20 BY MS. KIRSCH:

21 Q. Starting at the Bates No. KK1436 is Mr. Fawcett's
22 declaration, and you've put in his draft declaration that same
23 paragraph 4?

24 A. Yes.

25 Q. And is that because that was what you believed to be the

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1 truth at the time?

2 A. That is correct.

3 Q. Let's look at tab 63. Do you recognize that document?

4 A. Yes.

5 Q. Can you tell me what it is.

6 A. Yep. This is an exchange over that weekend before our
7 September 27 filing. I'd been on the phone a bunch with
8 Hartney to make sure -- I think I had a list of all the emails,
9 but I wanted to make sure I had each of them in the original
10 format for purposes of the exhibits.

11 MS. KIRSCH: I'll move this into evidence, tab 63.

12 MR. SHEN: No objection.

13 THE COURT: It's admitted.

14 (Kreindler Exhibit 63 received in evidence)

15 BY MS. KIRSCH:

16 Q. Tab 64, can you look at that and tell me what this document
17 is, Ms. Bennett.

18 A. This is -- so this is the email that I'd asked Hartney for
19 in the -- previously at tab 63, and I didn't want it as -- I
20 think he sent me a PDF of the attachment, and I just wanted it
21 in email with that document attached to the email.

22 MS. KIRSCH: OK. I'll move tab 64 into evidence.

23 MR. SHEN: No objection.

24 THE COURT: It's admitted.

25 (Kreindler Exhibit 64 received in evidence)

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1 BY MS. KIRSCH:

2 Q. Tab 65, Ms. Benett, what's going on here? This is
3 Sunday --

4 A. Right.

5 Q. -- September 26?

6 A. So this was -- I had thought that this was the email that I
7 thought had been missing from the folder that I was compiling
8 for the exhibit. And it was an exchange with either Isikoff or
9 Isikoff's producer and Jim, and I had just been -- this is
10 where I had been worried that there was something that had been
11 left out because I had the response but not the original email,
12 but I then had it.

13 MS. KIRSCH: I'd move tab 65 into evidence.

14 MR. SHEN: No objection.

15 THE COURT: It's accepted.

16 (Kreindler Exhibit 65 received in evidence)

17 BY MS. KIRSCH:

18 Q. So, Ms. Benett, fair to say over the weekend you were
19 reviewing with a fresh eye all of the work that had previously
20 been done in the investigation in order to get the filing on
21 the Monday as accurate as possible, is that right?

22 A. Yes, yeah.

23 Q. Is that something that commonly happens at the firm, that
24 more than one of the partners might go back over something and
25 look at it to make sure it is 100 percent accurate?

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1 A. Yeah, just -- yes, yes, especially -- certainly with the
2 judicial filing and certainly in this case, but as an ordinary
3 practice, yes, I would have somebody take a fresh set of eyes
4 at something like this.

5 Q. So let's look at tab 66. Can you tell me what this
6 document is, please.

7 A. Right. So this is me -- I had believed that all of the
8 deleted folders had also been checked, but I wanted to confirm
9 that the search encompassed incoming, outgoing, as well delete
10 folders.

11 MS. KIRSCH: I'll move tab 66 into evidence.

12 MR. SHEN: No objection.

13 THE COURT: Accepted.

14 (Kreindler Exhibit 66 received in evidence)

15 BY MS. KIRSCH:

16 Q. Ms. Bennett, when you redid all of these steps of the search
17 or went over everything with your fresh eyes, did anything
18 occur to you had been missed in the search that Mr. Maloney had
19 presided over?

20 A. I didn't find anything new.

21 Q. So let's look at tab 68. It's now 8:23 a.m. on Monday,
22 September 27. Can you identify this document, please.

23 A. My tab 68 is a 9:07 email.

24 Q. And when you look -- well, I'll move tab 67 into evidence.

25 THE COURT: Oh you're at 67 or 68?

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1 MS. KIRSCH: I'm sorry. Did I do that again? 67.

2 THE COURT: 67, yes, I see it.

3 MS. KIRSCH: I apologize.

4 THE COURT: Yes, this is again a new 67, so it's
5 possible that the Kingdom doesn't have a copy of it.

6 MS. FREY: I have given it to both counsel.

7 THE COURT: OK. Good. Any objection, counselor?

8 MR. SHEN: Can you just --

9 THE COURT: 67.

10 MR. SHEN: What's the date of that email, please?

11 THE COURT: Monday, September 27, at 8:23 is the top
12 email.

13 MR. SHEN: No objection.

14 THE COURT: Accepted.

15 (Kreindler Exhibit 67 received in evidence)

16 THE WITNESS: This is an email exchange between me and
17 Steve with, I think, just Jim's draft declaration.

18 BY MS. KIRSCH:

19 Q. OK.

20 A. I think I had talked to Jim to go over it with him one last
21 time before filing.

22 Q. Do you remember what the conversation with Mr. Kreindler
23 was about the privilege log?

24 A. I asked him, because there was the one email from -- the
25 one email from Fawcett to Isikoff that had that privilege log,

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1 I asked Jim. He didn't know what I was talking about with
2 respect to that email.

3 Q. Mr. Kreindler was not aware -- Mr. Kreindler told you that
4 he was not aware that Fawcett had sent the privilege log back
5 in July, is that true?

6 A. That's right. That's right.

7 Q. OK.

8 A. And I still had not heard back from John Fawcett at this
9 point.

10 Q. Right. Let's look at tab 69. Can you identify this
11 document for me.

12 A. This is the covering email and the declaration for Julia
13 Sienski from our office.

14 MS. KIRSCH: OK. I'd move tab 69 into evidence.

15 MR. SHEN: No objection.

16 THE COURT: It's admitted.

17 (Kreindler Exhibit 69 received in evidence)

18 BY MS. KIRSCH:

19 Q. Ms. Bennett, who is Julia Sienski?

20 A. She is -- she has the role of client liaison. She also
21 functions also as a paralegal on this case. So she is first
22 point of contact for many of the family members, and she also
23 manages a lot of the documents in the case.

24 Q. Is this an example of the steps that you took when you were
25 working with the various declarants to get their declarations

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1 ready for filing?

2 A. Yes, and I know that I work with Julia a lot, and she's
3 perfect. I know that I spoke with her in person about this
4 also, but I just want to -- I did not -- she's super-busy, and
5 I did not want to -- in addition to the conversation, I wanted
6 to make sure she saw in her email, not just on the declaration,
7 that she has signing under penalty of perjury. It has to be
8 accurate, and that we can make any changes that she wanted.

9 Q. Let's turn to tab 73.

10 All right. Can you identify this document,
11 Ms. Bennett?

12 A. This looks like the statement that John Fawcett sent to me
13 on Monday, September 27.

14 MS. KIRSCH: I'll move this into evidence.

15 MR. SHEN: No objection.

16 THE COURT: Admitted.

17 (Kreindler Exhibit 73 received in evidence)

18 BY MS. KIRSCH:

19 Q. So can you again just recall for us what led up to the
20 receipt of this document on the morning of September 27 or the
21 afternoon, I guess, to the best of your recollection?

22 A. Right. So this is the timestamp is 12:23, so I am fairly
23 confident that the time that I got the call from Jim was
24 between -- sorry, from John Fawcett was between 10:00 and 10:30
25 in the morning. My first conversation with John was, I

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1 believe, relatively brief. It was the -- I mean, he just said,
2 Megan, I can't sign my declaration, and I was, I think,
3 probably silent for some time and said, OK. I'm going to need
4 to think about this. Let's talk in a little bit is more or
5 less how the first call unfolded.

6 I called Justin Green to let him know for the
7 partnership about this. I called Steve Pounian to let him know
8 about this. There were -- I don't know if I talked before this
9 email. I don't know -- I was on the phone a lot. I don't know
10 if it was with more than those two people, but there was a --
11 there were a series of phone calls trying to figure out how
12 this happened. There was some conversation, should we ask the
13 Court for more time so we can do more of an investigation?
14 There was a decision that we needed to get this in to the Court
15 immediately that day. I think some of the other partners in
16 our office were looped in on some of those calls, and this
17 email came -- the whole day was sort of like that. This email
18 came partway through that process.

19 Q. So if we look at the attachment, it's that single-spaced
20 declaration that we looked at earlier, and this email, of
21 course, comes from Mr. Fawcett. Is this document something
22 that Mr. Fawcett wrote?

23 A. I believe so. It sounds like it, and it's certainly what
24 he sent me.

25 Q. You did not write this?

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1 A. No, I didn't write it.

2 Q. And this just came in from Mr. Fawcett?

3 A. Yeah.

4 Q. Did you understand this to be his first crack at what he
5 would put in a declaration?

6 A. Yes. I mean, he sent it to me unsigned. I had not -- I
7 don't think -- I mean, I know I had not asked him to send me a
8 declaration. I don't think I necessarily even knew that he was
9 even drafting one before I got this.

10 Q. So let me direct your attention to the fourth paragraph of
11 this declaration.

12 A. Yeah.

13 Q. He writes -- so Mr. Fawcett writes: "No one at Kreindler &
14 Kreindler instructed me to send the transcripts to Michael
15 Isikoff. Nor did anyone at Kreindler & Kreindler have any
16 knowledge of my sending it to Mr. Isikoff."

17 Ms. Bennett, you didn't tell Mr. Fawcett to write those
18 words, did you?

19 A. No.

20 Q. "Nor did any consultant or anyone else have any knowledge
21 of my sending the transcript to Mr. Isikoff."

22 Those are Mr. Fawcett's words, correct, Ms. Bennett?

23 A. Yes, they are.

24 Q. And you didn't tell him to write those words, did you?

25 A. No.

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1 Q. "Until today, no one aside from myself and Michael Isikoff
2 was aware that I sent the Jarrah transcript to him."

3 Do you see that?

4 A. I do.

5 Q. To the best of your recollection, much of those -- much of
6 that language shows up in his final declaration, isn't that
7 true?

8 A. Yes.

9 Q. He goes on to say: "I sent the transcripts to Mr. Isikoff
10 via a non-Kreindler email address."

11 You didn't tell him to write that, Ms. Benett?

12 A. No, I didn't even know he had a non-Kreindler email
13 address.

14 Q. He writes: "I did so to prevent the partners and staff of
15 Kreindler & Kreindler from knowing about my intended action and
16 to prevent them from stopping me should they wish to do so."

17 Did you write that, Ms. Benett, or did Mr. Fawcett?

18 A. That was Mr. Fawcett.

19 Q. Much of that language shows up in the final declaration,
20 isn't that true?

21 A. Yes.

22 Q. Or it might be the September 30 declaration.

23 A. One or the other, yeah.

24 Q. Mr. Shen asked you some questions about the fact that he
25 doesn't expound on his motives here in this first draft. Do

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1 you feel that he should have?

2 A. I -- I think, ultimately, it was important -- I mean, it
3 was important for me to understand why he would do something
4 this grave. I thought it was important for him to provide that
5 information to the Court. I knew that he was deeply troubled
6 by the Jarrah child pornography images. I did not have any
7 sense that he was so upset about it that he was behind the leak
8 to Isikoff, but once I had the information about his -- you
9 know, his -- not just his sense of righteousness about the
10 child pornography itself but also his, what seemed to me,
11 genuine and heartfelt concerns about the fact that Jarrah was
12 in Morocco, that he believed it was a place where children were
13 routinely trafficked for sexual purposes, and I knew a little
14 bit more about his personal background, it did seem to me that
15 that was really important context.

16 Q. Did Mr. Fawcett tell you during one of those conversations
17 on September 27 how strongly he felt about the crime of child
18 pornography?

19 A. He did, and I should add also -- he did, and he was very
20 scared to put anything in his declaration about his own
21 children, and he did not -- we had a conversation about -- I
22 understood that that was part of what influenced his decision
23 here. He didn't -- he was worried about his kids. He was
24 worried about whether -- he was worried about their -- them
25 being part of this, him discussing them, their safety, but he

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1 was clearly -- his reaction was very much informed by his
2 strong feelings about somebody that he believed was not only
3 trafficking in sexual images of minors but was deliberately
4 living in a place where he would have easy access to minor
5 children for sexual purposes.

6 Q. Can you explain that last bit a little more clearly that --
7 I take it Mr. Fawcett told you that he was concerned that
8 Mr. Jarrah was specifically living where he could continue to
9 consume or traffic child pornography?

10 A. John Fawcett -- my understanding from my conversations with
11 John Fawcett was that he believed that Jarrah was intentionally
12 in Morocco in order -- I don't know if he thought this was the
13 only reason, but at least in part -- in order to not only
14 traffic in the disturbing imaginary but to also have ready
15 access to minors, children, for sexual acts.

16 Q. There were some questions, Ms. Bennett, about whether -- in
17 any of those conversations with Mr. Fawcett about whether you
18 advised him to get a lawyer or not. Do you remember that
19 conversation on cross?

20 A. Yes.

21 Q. You don't represent Mr. Fawcett, of course, correct?

22 A. Correct.

23 Q. Did Mr. Fawcett ever come to you for legal advice?

24 A. Not that I recall.

25 Q. Did Mr. Fawcett come to you and ask for legal advice on

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1 this matter?

2 A. No.

3 Q. Did Mr. Fawcett ever ask you if you thought he needed
4 representation?

5 A. No.

6 Q. Prior to the October 4 order, were you focused on whether
7 there was a conflict of interest between the firm and
8 Mr. Fawcett?

9 A. I was not. I was not at all thinking about that. I was
10 focused on sort of dealing with what we would have to look at
11 in light of Fawcett being the source of the leak, figuring
12 out -- getting him off the system, closing his access to any
13 materials, trying to sort of move him -- get back our work
14 product that he had, find some orderly transition to proceeding
15 in the case without his involvement. But until the October 4
16 order with the language about potential referral for criminal
17 investigation, I -- I recognized that there was exposure for
18 violating the protective orders. I did not -- I had not been
19 viewing it as something where his interests would diverge from
20 the firm's prior to that.

21 Q. Fair to say on the 27th of September, your primary goal was
22 to get the facts in front of the Court as a first step?

23 A. Yes, yes.

24 Q. And also beginning on the 27th of September, you made sure
25 to take steps that Mr. Fawcett's access to the Kreindler

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Benett - Redirect

1 servers was shut down, is that correct?

2 A. Yes.

3 Q. Did you make clear to Mr. Fawcett in those early days that
4 he was not to be working on the case until you had an
5 opportunity to sort out the next steps?

6 A. Yes.

7 MS. KIRSCH: Your Honor, could I take a moment just to
8 go over my notes to make sure everything's done? I can do it
9 right here while people are waiting, or I could take five
10 minutes. Whatever's easiest.

11 THE COURT: If you think you're going to be wrapping
12 up, then let's take a couple of minutes.

13 MS. KIRSCH: I'm sure I have a couple more questions,
14 but I will be wrapping up quickly.

15 THE COURT: OK. Let's just take a two-minute pause.

16 (Recess)

17 BY MS. KIRSCH:

18 Q. Just a few more minutes.

19 Ms. Bennett, I did just want to follow up on one
20 question on September 27 when we were talking about just
21 getting Mr. Fawcett's declaration done. Your primary
22 obligation, of course, was to the Court at that time, is that
23 right?

24 A. Yes.

25 Q. Can you look at -- and I'm sorry to do this switch.

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1 There's a document that's in the Kingdom's binder, which is
2 that great big one, marked --

3 THE COURT: It's right here.

4 Q. -- tab 115.

5 THE COURT: So this is KSA 115. Got it.

6 Q. Do you recall this email exchange with Mr. Hartney?

7 A. I do.

8 Q. This is happening on Monday, September 27, am right?

9 A. Yes.

10 Q. Can you tell me what's going on in this email exchange and
11 what conversations may have ensued.

12 A. Sure. So I had talked with John Hartney initially before
13 starting to work on his declaration about the systems and the
14 search and the systems management, and I was -- I wanted to
15 make sure, obviously, that his declaration was accurate. I
16 understood that the Case Media system where the documents,
17 including the Jarrah deposition, were saved did not have
18 restricted access, meaning that it was available theoretical to
19 anybody at the firm.

20 He and I went back and forth because he didn't -- not
21 only did I not want to include language that suggested that
22 there was restricted access, but he also flagged I can't say
23 that there was restricted access. Because of the nature of our
24 document management system in every other case versus the 9/11
25 case, the reality is that in order for somebody to know how to

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Benett - Redirect

1 get to the 9/11 documents, including Jarrah, they would have to
2 come to the 9/11 team, to me or to one of the other attorneys.
3 We would then get them read in on the protective orders and
4 direct them as to how to access the materials saved in that
5 drive.

6 So we went through a number of different words that we
7 thought about using. I was concerned that saying "permission"
8 sounded too much like technical permissions, but at the same
9 time, I think in -- I coordinated it eventually with Hartney
10 and with Duke, and we used the language "able to access"
11 because it was true that you, as a firm policy, would not have
12 been -- and I didn't want to use "permissions" because I felt
13 like that sounded technical, but you would not have been
14 permitted to go to these files and to look at these materials
15 without reviewing and agreeing to be bound by the terms of the
16 protective orders. So John and I talked about that. I think
17 the email -- you see my email at 10:40 was trying to figure
18 out -- was trying to explain to him that it was -- that I
19 didn't want it to say it was restricted use, and then I just
20 felt like it was better to -- I mean, we talked that through.

21 I think "also need to discuss something with you, can
22 I call you in five" was both about working on that language,
23 but then also advising him about the -- about the leak and
24 about needing to get Fawcett off the systems.

25 Q. Understood.

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Benett - Redirect

1 So let's just talk generally for one more minute.

2 Since you began to work -- when did you first meet John
3 Fawcett?

4 A. I started at the Kreindler firm in October of 2006, so I
5 would have met him around then.

6 Q. Can you describe how closely you worked with Mr. Fawcett
7 since then and through today, or through September 27.

8 A. I've worked -- most of my work with him has been on the
9 9/11 case, which I joined that effort in 2016 to 2017. So it's
10 not -- that's not the only -- I do have other matters that John
11 isn't involved with, but in terms of my work on the 9/11 case,
12 I would work with him on a daily or near daily basis.

13 Q. How often do you communicate -- did you communicate with
14 Mr. Fawcett?

15 A. Every day if we were both in the office; otherwise,
16 sometimes by phone. I would say, if we weren't in the office,
17 maybe on a weekly basis.

18 Q. To what extent were you aware of Mr. Fawcett's physical
19 whereabouts?

20 A. I mean, if he was in the office, I knew he was there, but
21 otherwise I wouldn't know where he was if he wasn't in the
22 office.

23 Q. To what extent were you aware of Mr. Fawcett's activities
24 for the firm either at the goal level or the task level?

25 A. So, I mean, at the top level, he was a member of the team

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Benett - Redirect

1 of lawyers who were working on the 9/11 case. I mean he was a
2 member of the team that includes the lawyers who were working
3 on the 9/11 case, and we were all -- are all unified in our
4 effort to get the information that we believe will establish
5 the role of Saudi officials in the 9/11 attacks.

6 On a daily basis he was sort of a liaison with some of
7 our -- with a consultant or with investigators. He did a lot
8 of review of the material, the discovery that was produced. He
9 did independent investigation, for example, that might lead an
10 inquiry of ours in a new direction that was not necessarily
11 revealed in Kingdom materials or FBI materials. He did a lot
12 of FOIA requests that started to develop some of our leads in
13 the case.

14 Q. Did you ever communicate with Mr. Fawcett about the
15 protective orders in this case?

16 A. Yes.

17 Q. Can you describe those communications.

18 A. So, I mean, I put them in kind of two categories: One,
19 there were conversations of, yes, I know we are frustrated by
20 the protective orders and we have to abide by them, and there
21 was -- until September 27 I didn't believe that anybody was
22 knowingly going to violate the protective orders, but there
23 were several conversations about the fact that protective
24 orders were in place; they were orders of the court; we had to
25 comply with them.

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1 There was a sort of parallel conversation that
2 revolved around efforts to be relieved from the protective
3 orders. There were several motions in 2019, maybe 2018, but
4 2018, '19, into 2020 about what the families or the plaintiffs
5 felt like was an over-designation by the Kingdom of Saudi
6 Arabia of its materials. There was -- I don't know if there
7 were any, certainly not many, I'm not sure any, documents that
8 the Kingdom produced that weren't produced subject to the MDL
9 protective order. We felt like that was an over-designation.
10 We felt like the process that Judge Casey had in place was
11 being -- that the Kingdom was using it to its own strategic
12 advantage, and we did not think it was consistent with the
13 letter of the original Casey order, ECF 1900.

14 So there was some motion practice on that that we did
15 not prevail on, but certainly it came up in the context of the
16 protective orders are what they are. You have to abide by
17 them. They came up also in connection with the FBI protective
18 order. We had -- we agreed voluntarily to sign the protective
19 order because otherwise we wouldn't have had access to any of
20 the FBI materials.

21 At the same time, as materials were produced, we had
22 serious questions about the need, any legitimate need, to
23 maintain those materials under the protective order. We had
24 talked, sort of caucused amongst ourselves and with other firms
25 on the Plaintiffs' Executive Committee, about ultimately moving

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Benett - Redirect

1 to lift the FBI protective order. There was not unanimity
2 among the Plaintiffs' Executive Committee firms to do so. It
3 was certainly something that we talked about a lot internally,
4 and along with the conversation that unless and until this
5 protective order is lifted, either by the Department of Justice
6 or after motions practice, we must live with it.

7 Q. Ms. Bennett, there's been some suggestion that because
8 Mr. Kreindler has publicly said that he does not believe these
9 protective orders should be in place, do you think that that
10 created an environment in the Kreindler firm that made people
11 feel as though they need not respect the protective orders?

12 A. I would say that, if anything, those public statements
13 are -- reinforce internally that we might not -- we might be
14 frustrated by the protective orders, it may restrict us from
15 what we can say to our clients or what we could say publicly,
16 and we have to abide by the public orders. They are in place.
17 The Court has not lifted them. If we don't like it, we live
18 with it. If the time is right or if the Department of Justice
19 decides otherwise, we will proceed differently, but we are
20 bound by those protective orders. And Jim's -- to my mind,
21 Jim's public comments about them, although not the language
22 that I would use, reflect an understanding that we are bound by
23 them.

24 Q. Mr. Fawcett never gave you any indication that he would not
25 respect the protective orders, did he?

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Benett - Redirect

1 A. Never.

2 Q. Ms. Benett, did you ever order or direct Mr. Fawcett to
3 send a copy of the Jarrah transcript to Mr. Isikoff?

4 A. Never.

5 Q. Were you aware at any time prior to September 27 that it
6 was Mr. Fawcett who sent a copy of the Jarrah transcript to
7 Mr. Isikoff?

8 A. I was not aware of that until the morning of September 27.

9 Q. And when you found out for the first time that Mr. Fawcett
10 was the source of the leak of the Jarrah transcript to
11 Mr. Isikoff, what was the first thing that you did?

12 A. I just don't remember if it was -- well --

13 Q. The most important thing that you did. That was a bad
14 question.

15 A. I changed all of our declarations. I pulled John's
16 declaration, and I removed from all of our declarations that we
17 didn't know who the source of the Isikoff leak was.

18 Q. So you did not in any way ratify Mr. Fawcett's sending of
19 the Jarrah transcript to Mr. Isikoff?

20 A. No.

21 MS. KIRSCH: I have no further questions.

22 THE COURT: Thank you.

23 MR. SHEN: No questions, your Honor.

24 THE COURT: Ms. Benett, you're done. You can go back
25 to counsel's table.

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Benett - Redirect

1 (Witness excused)

2 THE COURT: We're going to finish today, so we're
3 going to take a half-hour brunch -- brunch, half-hour lunch.
4 Be back here at 2 o'clock.

5 If I can also just ask -- sorry. I do want to deal
6 with this exhibit issue. I don't know if there is a list from
7 the Kingdom side about the exhibits that were discussed
8 yesterday, if we can reach some agreement so we can just move
9 everything in at the end of the hearing, but I'll ask while
10 you're eating sandwiches to think about that, too.

11 Thank you. See you in a half an hour.

12 (Lunch recess)

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Pounian - Cross

1 THE COURT: Mr. Shen.

2 MR. SHEN: Saudi Arabia calls Steven Pounian.

3 THE COURT: Good afternoon, Mr. Pounian.

4 STEVEN POUNIAN,

5 called as a witness by the Kingdom,

6 having been duly sworn, testified as follows:

7 THE DEPUTY CLERK: State your full name for the
8 record.

9 THE WITNESS: Steven R. Pounian, P-O-U-N-I-A-N.

10 THE COURT: Mr. Pounian, one, you have to keep your
11 mask on, I'm afraid. Two, make sure you speak directly into
12 the microphone. And three, during the questioning by the
13 Kingdom, they are going to put exhibits on the computer in
14 front of you, but this is their binder.

15 Mr. Shen, you may begin.

16 CROSS-EXAMINATION

17 BY MR. SHEN:

18 Q. Good afternoon, Mr. Pounian.

19 A. Good afternoon.

20 Q. If you would look at Exhibit 43 in the binder in front of
21 you. It also will appear on your screen.

22 Sir, Exhibit 43 is a letter that the Plaintiffs'
23 Executive Committee submitted to the court on July 27 in
24 response to a request by the Kingdom for certain discovery
25 pertaining to the leak to Michael Isikoff. Do you see that?

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Pounian - Cross

1 A. I do.

2 Q. There is a statement in the letter which says, "Each of the
3 lead PEC firms has already conducted internal investigations."

4 MR. SHEN: Can we highlight that language for Mr.
5 Pounian.

6 It's at the top of the second page.

7 Q. Sir, this letter was submitted under your signature,
8 correct?

9 A. It was.

10 Q. Now, the investigation that is being referred to in this
11 paragraph, was that conducted by Mr. Maloney?

12 A. The firm had conducted an investigation, and I had
13 personally also conducted an investigation.

14 Q. You had individually, in your personal capacity, conducted
15 an investigation as well?

16 A. I did, yes.

17 Q. What personal investigation did you conduct?

18 A. Well, I wanted to check to make certain that the -- I
19 wanted to know exactly what had happened and how the transcript
20 had been handled by the law firm.

21 Q. What investigation did you personally do independent of
22 what Mr. Maloney did?

23 A. I don't know if it was independent. It was probably
24 concurrent with what he was doing. I got the information from
25 Mr. Hartney, the IT person, and I may have also contacted Julia

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Pounian - Cross

1 Sienski at the firm to sort of determine where the transcript
2 had gone. I was very concerned about nailing down exactly what
3 had happened with the transcript.

4 Q. Now, Mr. Hartney had done the search of the firm's e-mail
5 records, is that correct?

6 A. He had done the search, yes.

7 Q. He provided the search results to Mr. Maloney and to
8 yourself?

9 A. I don't recall him providing the results to myself. I was
10 focused on the transcript and if the transcript had left the
11 law firm and to track that.

12 Q. Did you ask Mr. Hartney to do an e-mail search?

13 A. Well, to the extent that we were tracking the transcript, I
14 guess that would be included in an e-mail search -- an e-mail
15 search would be included in that.

16 Q. The question is, did you ask Mr. Hartney to conduct a
17 search of the e-mail system?

18 A. I don't remember specifically asking him that, no.

19 Q. You said that you spoke to Ms. Sienski and the focus of
20 that was to determine where the transcript was saved and who
21 had received it?

22 A. I honestly don't remember if I spoke to Ms. Sienski, but I
23 do know that I wanted to determine if the transcript had left
24 the law firm in any way, shape or form. And that's what I
25 tried to do.

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Pounian - Cross

1 Q. Is it fair to say, Mr. Pounian, that in making this
2 representation in this letter, that you were relying upon the
3 investigation that Mr. Maloney and Mr. Hartney had conducted?

4 A. And the things that were represented that I understood from
5 my conversations with the people at the law firm about that.

6 Q. Did you ask Mr. Fawcett specifically whether he had sent
7 the transcript to Mr. Isikoff?

8 A. I asked Mr. Fawcett if he knew anything about how
9 Mr. Isikoff got the transcript.

10 Q. When did you ask him that?

11 A. I think about a week after the article.

12 Q. So before this letter went into the court?

13 A. It was before this letter.

14 Q. He told you to your face he knew nothing about it?

15 A. That is correct.

16 Q. That was a lie, correct?

17 A. That is correct.

18 Q. How many times did Mr. Fawcett lie to your face about
19 sending the transcript to Mr. Isikoff?

20 A. It was one time we had that conversation. At the same
21 time, I was looking at where the transcript had gone.

22 Q. And that was it, just that one time?

23 A. It was at one time because I was trying to -- I had found
24 out he had sent the transcript to a consultant, and that's what
25 I was really tracking down. I had found out that the

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Pounian - Cross

1 transcript left the office and went to a consultant.

2 Q. My question to you is, how many times did Mr. Fawcett tell
3 you that he did not send the transcript to Mr. Isikoff?

4 A. It was once.

5 Q. If you could turn, please, to Exhibit 108 in your binder.

6 Now, Mr. Pounian, you were involved in drafting the
7 September 27 declaration that Mr. Fawcett submitted to the
8 court, correct?

9 A. He drafted the declaration and sent me and Megan a draft.

10 Q. But the final declaration that was submitted, you were the
11 one who drafted it, correct?

12 A. I put it into the system and sent it back and forth with
13 Mr. Fawcett to finalize it for the court.

14 Q. So, Exhibit 108, this is an e-mail. The top part is
15 apparently cut off, but it's from Mr. Fawcett to yourself and
16 to Ms. Benett. 108A contains the declaration that Mr. Fawcett
17 drafted and sent you, is that correct?

18 MR. SHEN: If we can show 108A, please.

19 A. Yes, that's it.

20 Q. This is the language that Mr. Fawcett drafted, correct?

21 A. That is correct.

22 Q. If you could turn, please, to 109.

23 THE COURT: Can I ask one clarifying question, back to
24 108? This e-mail doesn't have the "from" header, and I am just
25 wondering if we know the "from" e-mail. There is an indication

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Pounian - Cross

1 that it is not a Kreindler e-mail.

2 MR. SHEN: I believe that this e-mail was produced at
3 another location with a from --

4 MS. KIRSCH: If it's helpful, the same e-mail is
5 Exhibit 73 in our book.

6 THE COURT: That just says John Fawcett.

7 In any event, sorry to interrupt.

8 BY MR. SHEN:

9 Q. Now, if we could look at Exhibit 109, please.

10 This is an e-mail, September 27, at 1:41 p.m., from
11 yourself to Ms. Benett, attaching a declaration 1.docx.

12 Do you see that?

13 A. I see the header.

14 Q. Let's look at the exhibit. It's at 109A.

15 This contains a new version of Mr. Fawcett's
16 declaration.

17 Did you prepare this version that's attached at 109A?

18 A. Yes, I prepared it, based on Mr. Fawcett's original draft.

19 Q. So Mr. Fawcett sent you the draft that we looked at in the
20 prior exhibit, and then you created this new document and sent
21 it to Ms. Benett, is that right?

22 A. That is correct.

23 MR. SHEN: I have no further questions.

24 MS. KIRSCH: If I could just have a moment.

25 THE COURT: Sure.

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Pounian - Redirect

1 REDIRECT EXAMINATION

2 BY MS. KIRSCH:

3 Q. Good afternoon, Mr. Pounian.

4 A. Good afternoon.

5 Q. Just to finish up on the topic that we were just
6 discussing, can you just tell us in your own words how your
7 draft of the declaration for Mr. Fawcett came to be. Just the
8 events of September 27, if you could just walk us through what
9 you recall happening on that day.

10 A. Sure. We were preparing to finalize the papers for the
11 court, and we had prepared drafts of everyone's declaration.
12 And I know that Megan was trying to get ahold of John to get a
13 signature on his declaration. And that morning Megan called me
14 and told me that she finally did get ahold of John, and that he
15 had told her that he had leaked the transcript to Mr. Isikoff.

16 After that, we had conversations, and we decided that
17 we needed to prepare the filings and get a declaration from
18 John to present the facts to the court, and we proceeded to do
19 that. John sent a draft, and we worked with him on the draft
20 and filed it along with the papers. And we had to obviously,
21 of course, change all the declarations that we had prepared for
22 ourselves because we now knew how the leak had occurred, and we
23 then edited all of our declarations and filed them with the
24 court that evening.

25 Q. Mr. Pounian, how long have you known Mr. Fawcett?

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Pounian - Redirect

1 A. We have worked together for four years at the firm, and I
2 have known him since 2002, 2003.

3 Q. As you have been working on this case, how often did you
4 communicate with Mr. Fawcett?

5 A. We communicated typically over the past three years almost
6 every day. He was handling the facts in the case, and we would
7 be in touch constantly all the time.

8 Q. To what extent were you aware of his physical whereabouts
9 on a day-to-day basis?

10 A. Well, we shared an office at the law firm when I was
11 working at the firm, when I was physically there. So I saw him
12 whenever I was in the office. And I would communicate with him
13 practically every day. So I was aware of where he was and what
14 he was doing.

15 Q. So to what extent were you aware of Mr. Fawcett's
16 activities for the firm at the goal level, at the task level,
17 would you say?

18 A. Well, I would talk to John about what his assignments were
19 on the case and what he was supposed to be doing on the case.
20 I did that regularly. It was a nonstop kind of back-and-forth
21 activity between the two of us. I knew what he was doing. I
22 knew what his assignments were on the case.

23 Q. Do you consider Mr. Fawcett to be a professional?

24 A. Definitely. He is a long-standing researcher,
25 investigator. He was someone that we trusted as a

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Pounian - Redirect

1 professional. He was someone who was a colleague and a peer to
2 all of us at the firm.

3 Q. Did you communicate with Mr. Fawcett about the protective
4 orders in this case?

5 A. Yes, of course. We worked with the protective orders
6 almost constantly on the case, and we were always
7 drafting -- every time we submitted something to the court,
8 every time we had any kind of hearing with the court, we were
9 working with the protective orders to make certain that we were
10 not revealing any protected information.

11 Q. There was some testimony that you were not privy to about
12 Mr. Kreindler and his media presence and his public statements
13 that he dislikes the protective orders in this case. Did you
14 ever find that Mr. Kreindler's public statements about the
15 protective orders suggested within the office that they need
16 not be adhered to?

17 A. Never, no. The orders were a source of frustration in that
18 we couldn't share certain information with our clients, but we
19 adhered to them strictly and it was something we obeyed all the
20 time. There was no question about it.

21 Q. Did Mr. Fawcett ever indicate to you in any way his
22 awareness of his obligations under the protective orders?

23 A. Yes.

24 Q. How did he do that?

25 A. Well, as I said before, it was a matter, we were working

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Pounian - Redirect

1 together on various projects and were always discussing the
2 protective orders and how they applied to certain documents we
3 were filing, or certain communications we were having. It was
4 just a given in everything that we were doing.

5 Q. So did Mr. Fawcett ever give you any reason to suspect that
6 he would not be honoring his obligations under the protective
7 orders?

8 A. Never.

9 Q. Are you aware of any complaints about Mr. Fawcett, by the
10 clients or by others, in all the years that you have worked
11 with him?

12 A. I never heard any complaints about Mr. Fawcett, never.

13 Q. Have you ever heard anyone accuse Mr. Fawcett of behaving
14 in an unprofessional manner?

15 A. Never.

16 Q. Is it your view that Mr. Fawcett is irresponsible or
17 unprofessional in any way?

18 A. I have never known him to be that way, and this was the
19 first time I had ever known him to do anything that was
20 out-of-bounds, and it was a shock when it happened.

21 Q. Did you order or direct Mr. Fawcett to share the transcript
22 of Mr. Jarrah's deposition with Mr. Isikoff?

23 A. No.

24 Q. Were you aware at any time prior to September 27 that it
25 was Mr. Fawcett who shared the Jarrah transcript with

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Pounian - Redirect

1 Mr. Isikoff?

2 A. No.

3 Q. As we discussed, you never had any reason to suspect that
4 it was Mr. Fawcett who shared the Jarrah transcript with
5 Mr. Isikoff, is that correct?

6 A. I didn't have any reason to suspect that he did that.

7 MS. KIRSCH: I have no further questions.

8 THE COURT: Thank you.

9 MR. SHEN: No questions.

10 THE COURT: You win the award for the shortest
11 witness.

12 Thank you, sir.

13 (Witness excused)

14 THE COURT: Counsel.

15 MR. HANSEN: Your Honor, we call Mr. Fawcett.

16 MS. KIRSCH: Your Honor, I know your Honor has
17 indicated we should finish today, which we wholeheartedly agree
18 with. I don't know if there is some way to apportion time to
19 ensure that if there is any need for the Kreindler firm to have
20 an opportunity to question Mr. Fawcett as well. I don't know
21 how your Honor wants to proceed.

22 THE COURT: Fair and good question. Let's go about an
23 hour and see where we are, but I will make sure you have an
24 opportunity.

25 (Continued on next page)

LB289115

Fawcett - Cross

1 JOHN FAWCETT,

2 called as a witness by the Kingdom,

3 having been duly sworn, testified as follows:

4 THE DEPUTY CLERK: Would you please state your full
5 name for the record.

6 THE WITNESS: John Fawcett.

7 THE COURT: Mr. Fawcett, you can be seated. We are
8 going to ask you to keep your mask on. I am afraid that's our
9 court requirement for COVID protocols.

10 I am also going to ask you to hand me that binder, and
11 I am going to give you this big binder. Those are the Kingdom
12 exhibits. They will likely show you exhibits on the monitor.
13 You will also be able to see those in the binder.

14 Just move close to the microphone so everyone can hear
15 you clearly, especially the court reporter.

16 CROSS-EXAMINATION

17 BY MR. HANSEN:

18 Q. Good afternoon, Mr. Fawcett.

19 A. Good afternoon.

20 Q. If you would speak up, I would appreciate it.

21 Mr. Fawcett, you are here today represented by
22 counsel?

23 A. Yes, I am.

24 Q. That's these folks sitting here to the left?

25 A. Yes.

LB289115

Fawcett - Cross

1 Q. Are they counsel paid for by Kreindler & Kreindler?

2 A. I believe so, yes.

3 Q. Mr. Fawcett, you have worked for Kreindler & Kreindler for
4 almost 20 years?

5 A. Yes.

6 Q. You have worked directly under the supervision of James
7 Kreindler, correct?

8 A. Amongst others, yes.

9 Q. And pretty much the total source of your income over those
10 close to 20 years has come from Kreindler & Kreindler?

11 A. 80 to 90 percent.

12 Q. Your work at Kreindler & Kreindler includes managing all
13 discovery material in the 9/11 case, right?

14 A. Yes, in part.

15 Q. I'm sorry?

16 A. In part, yes.

17 Q. But you do that?

18 A. Yes, I do.

19 Q. You did it through September 27th of this year?

20 A. Yes, I did.

21 Q. Would it also be fair to say dealing with the press on the
22 9/11 case is also part of your job at Kreindler & Kreindler?

23 A. Yes, on occasion.

24 Q. When you do that, do you bill for your time?

25 A. Sometimes.

LB289115

Fawcett - Cross

1 Q. When do you not do it?

2 A. When I'm doing it, it's kind of more background research
3 than work.

4 Q. But when you are briefing reporters on a subject that Mr.
5 Kreindler is also talking to reporters about, is that part of
6 your duties for which you seek compensation and bill?

7 A. I am not sure if I billed directly for that. I don't
8 recall in my time records putting that.

9 Q. You record your hours every day when you're working on the
10 case?

11 A. Yes, I do.

12 Q. Do you include within those hours time spent dealing with
13 press matters?

14 A. Not very often.

15 Q. Would you say, Mr. Fawcett, that you have a certain amount
16 of loyalty for Mr. Kreindler as a result of your long work
17 together?

18 A. Yes.

19 Q. So, I am going to ask you some questions about your state
20 of mind at the time that you provided these sworn declarations
21 to the court on September 27 and September 30.

22 Were you aware at the time you provided those
23 declarations that what you were claiming in your declarations
24 could subject you to criminal prosecution?

25 A. Not now I wasn't.

LB289115

Fawcett - Cross

1 Q. Had anyone at Kreindler & Kreindler, before you submitted
2 those declarations, ever said to you, in words or substance,
3 John, you're basically admitting to a crime here, you ought to
4 seek counsel?

5 A. No, I don't think so.

6 Q. Were you aware when you gave those declarations that
7 deliberately violating a court order could be a crime?

8 A. No, I didn't realize that at the time.

9 Q. When you submitted those sworn declarations, were you aware
10 that destroying evidence that might be needed in a proceeding
11 could subject you to obstruction of justice charges, also a
12 crime?

13 A. No, I hadn't considered that.

14 Q. When you submitted your declarations, were you aware that
15 submitting false declarations could subject you to perjury
16 charges?

17 A. Yes, I did.

18 Q. Are you aware sitting here today that any false testimony
19 you give today could likewise subject you to perjury charges?

20 A. Yes, I am aware.

21 Q. If you had known the full extent of the criminal
22 consequences of submitting your sworn declarations, Mr.
23 Fawcett, would you have submitted those declarations on
24 September 27 and September 30?

25 A. I don't know, really.

LB289115

Fawcett - Cross

1 Q. Let's talk for a minute about the protective orders.

2 You're aware that there are two such orders in this
3 case?

4 A. That's right.

5 Q. The MDL protective order and the FBI protective order?

6 A. Correct.

7 Q. Before you did any work under those orders, you studied
8 them and understood them?

9 A. I wouldn't say I studied them. I had read them.

10 Q. You're hesitating.

11 A. Well, studied implies a lot of understanding.

12 Q. I will start with the MDL order. That was issued in 2006
13 by Judge Casey, correct?

14 A. I believe so, yes.

15 Q. Did you read that order?

16 A. Yes, I did.

17 Q. You're hesitating.

18 A. Well, I don't remember the exact point, but I would have
19 read it at the time, yes.

20 Q. When you read it, do you remember that you understood every
21 piece of it?

22 A. No, I didn't.

23 Q. Let's go to the FBI protective order.

24 Are you familiar with that order?

25 A. Yes, I am.

LB289115

Fawcett - Cross

1 Q. Is that yes, ma'am?

2 A. Yes, I am.

3 Q. Were you aware that's an order that was entered by this
4 court in 2018?

5 A. Yes.

6 Q. Did you read every line of that?

7 A. Yes, I would have at the time.

8 Q. Did you understand every line of that order?

9 A. No, I didn't.

10 Q. Why are you giving me that answer?

11 A. Because things were pointed out to me after my
12 declarations.

13 MR. GERBER: Your Honor, I think we are getting close
14 to some privileged communications, if you could instruct the
15 witness.

16 THE COURT: To the extent you are answering based on
17 discussions you have had with your lawyer, you shouldn't answer
18 those questions. To the extent, when you read the protective
19 order, that you had questions or didn't understand it, you can
20 answer that question.

21 THE WITNESS: OK.

22 BY MR. HANSEN:

23 Q. Putting aside anything your lawyer told you, Mr. Fawcett,
24 what was it about the protective order that you didn't
25 understand?

LB289115

Fawcett - Cross

1 A. I'm a little confused as to whether I should answer this or
2 not.

3 MR. GERBER: Your Honor --

4 THE COURT: Sir, when you read the protective order,
5 did you understand what it meant?

6 THE WITNESS: I did at the time, but things were
7 pointed out later that I realized I didn't understand it. I
8 thought I understood at the time, but in hindsight there were
9 some aspects that I did not understand.

10 MR. HANSEN: Let me try a different way, your Honor.

11 Q. You're not a lawyer, are you, Mr. Fawcett?

12 A. No, I'm not.

13 Q. You were working with a number of lawyers at Kreindler &
14 Kreindler, were you not?

15 A. Yes, I was.

16 Q. Did any of the lawyers at Kreindler & Kreindler explain to
17 you the various provisions of the FBI protective order so you
18 could be sure you understood it?

19 A. We would have discussed both protective orders
20 occasionally. I don't remember going through it line by line.

21 Q. No one ever gave you a full briefing of every provision of
22 the FBI protective order?

23 A. No, I don't think so.

24 Q. From your understanding, and I don't want to get what your
25 able counsel has told you, what does the FBI protective order

LB289115

Fawcett - Cross

1 provide in terms of a deposition transcript that has not been
2 reviewed by the FBI?

3 MR. GERBER: Objection. If we could just get clarity.
4 Is he asking the witness for his understanding in an earlier
5 period or his understanding now? I think the timing is going
6 to matter here, your Honor.

7 MR. HANSEN: Let me back up.

8 Q. Before you hired current counsel, at the time you submitted
9 your declarations, tell us what you understood the FBI
10 protective order provided in terms of a deposition transcript
11 in this case that had not yet been fully reviewed by the FBI.

12 A. What comes to mind is that the material -- the portions of
13 the transcript based on the FBI protected material was FBI
14 protected. That's the way I was viewing it.

15 Q. Did you ever actually read the order?

16 A. Yes, I have read the order.

17 Q. Let's look at it together for a minute.

18 MR. HANSEN: Let's get up on the screen the order in
19 this case. This is Exhibit 15, which I don't believe we have
20 to offer it into evidence because it's a court filing. If
21 counsel disagrees, we can have that dispute now.

22 MR. GERBER: No objection.

23 THE COURT: Thank you.

24 This is KSA 15.

25 MR. HANSEN: Let's highlight paragraph 10, please.

LB289115

Fawcett - Cross

1 BY MR. HANSEN:

2 Q. You see here it says, "Pending review of the deposition
3 transcript by the FBI, any deposition transcripts containing
4 such questions and testimony shall be automatically subject, in
5 their entirety, to the same protections and precautions as the
6 protected information. Upon receipt of the deposition
7 transcript, a copy shall be served on the FBI by the PECs. The
8 FBI will have 30 days to review and designate the portions of
9 the transcript that contain protected information."

10 Had you read that language, Mr. Fawcett?

11 A. I read it, but this is the piece that I didn't appreciate
12 until later.

13 Q. You were handling all the depositions in this case as part
14 of your job supervising the discovery material for Kreindler &
15 Kreindler, correct?

16 A. I'm not sure I understand what you mean.

17 Q. No one at Kreindler & Kreindler informed you that you
18 needed to treat all these deposition transcripts as fully
19 confidential under the FBI order until such time as this had
20 been complied with, right?

21 A. I believe we did protect them.

22 Q. The Al Jarrah testimony?

23 A. With that exception.

24 Q. How can you say that when you didn't even know what the
25 rule provided?

LB289115

Fawcett - Cross

1 A. We just generally protected all material. It was not
2 readily available.

3 Q. You didn't even understand the order, did you?

4 A. This clause I did not, I admit.

5 Q. I am going to ask you just a few questions about the
6 protective order violation found by this court in 2017.

7 Were you aware that --

8 MR. GERBER: Objection, your Honor. We understand, of
9 course, that the court has found a waiver of the Fifth
10 Amendment with regard to the subject matter of the
11 declarations. This goes far beyond that, literally years back.
12 We respectfully submit that is not covered by the finding of
13 waiver by the court, and we would advise our client not to
14 answer questions regarding that other subject matter based on
15 his Fifth Amendment privilege against self-incrimination.

16 THE COURT: Are you permitting your client to answer
17 questions about his knowledge of those events in the court's
18 findings or in its entirety?

19 MR. GERBER: Fair enough. To the extent that the
20 question is about the court's findings, yes, fair, he can get
21 into that. I do want to make clear our position, to the extent
22 he is going to be asked questions regarding his own conduct.

23 THE COURT: His involvement. Then he asserts the
24 Fifth.

25 MR. GERBER: Yes, your Honor.

LB289115

Fawcett - Cross

1 THE COURT: So, counsel and sir, if you want to ask
2 questions about what Mr. Fawcett knew about those allegations,
3 the court record, etc., those are questions that you may
4 answer. To the extent you intend to ask questions of Mr.
5 Fawcett about his involvement in those allegations, where the
6 court found breach or where the FBI made an allegation of
7 breach, your lawyer is advising you to take the Fifth Amendment
8 and decline to answer those questions.

9 Do you understand that?

10 THE WITNESS: No, I don't entirely.

11 MR. HANSEN: Can I just ask the questions? I think
12 the questions will sort this out.

13 THE COURT: You can proceed, and counsel and I will
14 both watch carefully.

15 BY MR. HANSEN:

16 Q. I am going to ask about your state of mind, Mr. Fawcett.

17 Were you aware in 2017 that this court entered a
18 finding of a protective order violation by Kreindler &
19 Kreindler?

20 A. Yes.

21 Q. Who did you understand the court to have found to have
22 violated the protective order?

23 A. I don't really recall.

24 Q. Do you know whether it was you or Mr. Kreindler himself?

25 A. I believe they found Jim responsible.

LB289115

Fawcett - Cross

1 Q. Both you and Mr. Kreindler had talked to Caleb Hanan,
2 correct?

3 MR. GERBER: Objection, your Honor.

4 THE COURT: I think the witness is going to take the
5 Fifth to that question.

6 Q. Are you going to follow your counsel's advice and invoke
7 your Fifth Amendment privilege against self-incrimination and
8 refuse to answer my last question?

9 A. I would like to assert my Fifth Amendment privilege.

10 MR. HANSEN: I couldn't hear the answer, your Honor.

11 THE COURT: He said yes.

12 Q. All right, Mr. Fawcett. As a result of your
13 awareness -- actually, let me back up.

14 Were you aware that the court in 2017 also issued an
15 instruction to counsel to be exceedingly discreet in dealing
16 with protected material in the future?

17 A. I don't remember sitting here today the order.

18 Q. Were you aware in 2017 that the court had issued no
19 particular sanction against the violator of the protective
20 order?

21 A. I don't remember exactly.

22 Q. Were you present in the courtroom during the hearing on
23 that particular violation?

24 A. No.

25 Q. Did you read the transcript of that hearing?

LB289115

Fawcett - Cross

1 A. I may have read it at the time. I don't recall it right
2 now.

3 Q. You think you likely did?

4 A. Yeah, I likely did.

5 Q. So you would have seen that the court gave a warning,
6 called it a first warning, that violations would be dealt with
7 differently in the future, correct?

8 A. I don't remember it at the moment, no.

9 Q. So let's move forward in time to 2021.

10 You are aware, are you not, Mr. Fawcett, that your
11 boss, Mr. Kreindler, gave an interview to Michael Isikoff for
12 his podcast on July 1, 2021, correct?

13 A. I don't recall the date, but in that time frame, yes.

14 Q. I will represent to you that we have evidence in the record
15 of that, just to anchor you in time.

16 Mr. Kreindler was speaking to the reporter,
17 Mr. Isikoff, at that time with your knowledge, correct?

18 A. Right.

19 Q. And you were likewise speaking to the same reporter,
20 Mr. Isikoff, in the same time period, correct?

21 A. Right.

22 Q. In fact, you had a number of telephone calls and text
23 messages with Mr. Isikoff in the days immediately after July 1,
24 did you not?

25 A. Yes, I believe so.

LB289115

Fawcett - Cross

1 Q. In fact, let's go to another exhibit, if we could. This is
2 Exhibit 134.

3 MR. HANSEN: I am going to offer them into evidence.
4 They were records produced by Mr. Fawcett in response to a
5 court order.

6 We offer them.

7 MR. GERBER: No objection, your Honor.

8 THE COURT: KSA 134 is admitted.

9 (KSA Exhibit 134 received in evidence)

10 Q. So, these are your phone records for your personal cell
11 phone, Mr. Fawcett?

12 A. Yes.

13 Q. If you look at the top of the page, we will highlight it,
14 we have four entries for a number 202-258-2535.

15 You recognize that to be Michael Isikoff's telephone
16 number, don't you?

17 A. Yes, I do.

18 Q. One of the calls is for 22 minutes?

19 A. Yes.

20 Q. And you were talking to Mr. Isikoff about the 9/11 cases,
21 correct?

22 A. Yes, I was.

23 Q. And you were talking to Mr. Isikoff about leaking the Al
24 Jarrah deposition transcript to Mr. Isikoff, weren't you?

25 A. We were talking about the Jarrah deposition.

LB289115

Fawcett - Cross

1 Q. Did you tell him in those calls, in words or substance,
2 that you were going to give him the Al Jarrah deposition
3 testimony?

4 A. I'm not entirely sure if it was in that conversation we
5 would have been discussing the deposition.

6 Q. Mr. Fawcett, jumping a little ahead in time, just for
7 purposes of the next few questions, you are aware that the
8 court ordered you on August 30 to both provide a declaration
9 and to provide any and all communications you had with
10 Mr. Isikoff, correct?

11 A. Yes.

12 Q. Isn't it true, sir, that none of these calls I am showing
13 you to you were ever disclosed to the court until we got a
14 court order to provide further discovery?

15 A. I guess I don't understand.

16 Q. OK. These calls were not disclosed in your September 27
17 declaration, were they?

18 A. No, I don't think so.

19 Q. These calls were not disclosed in your September 30
20 declaration, were they?

21 A. No, I don't believe so.

22 Q. In addition to calls, you also had a number of texts with
23 Mr. Isikoff, did you not?

24 A. If I could maybe correct that, I believe the declarations
25 did include discussion of the calls, or reference to calls.

LB289115

Fawcett - Cross

1 Q. I'm sorry. You believe there was reference?

2 A. Yes, I believe so.

3 Q. You think there was one in your September 27 declaration?

4 A. I'm not sure which one it is, or both of them.

5 Q. Well, you could take a look at both of them.

6 I will represent to you there is some references to
7 phone calls in your September 30 declaration. So let's go to
8 that. That's Exhibit 59.

9 You're familiar with this declaration?

10 A. Yes, I am.

11 Q. You say in here, in paragraph 3, you privately communicated
12 with Michael Isikoff several times, correct?

13 A. Yes.

14 Q. Let's go further on down. Go to the next page, please.
15 There is a reference to your first call. Let's see where we
16 can find that.

17 MR. HANSEN: It's a little further down.

18 Can we keep going, please?

19 Q. There is a reference in paragraph 8 to a second phone call?

20 A. Yes.

21 Q. Let's go back to paragraph 3. I didn't see it.

22 There are three calls.

23 MR. HANSEN: Paragraph 3, please, Geoff.

24 Q. Paragraph 3. You believe the first time was in early July,
25 correct?

LB289115

Fawcett - Cross

1 A. Correct.

2 Q. Now, let's go to paragraph 8.

3 You had a second call with him about the timing?

4 A. Right.

5 Q. When was that?

6 A. This would have been after the first call but prior to the
7 publication.

8 Q. It's not July 3, is it?

9 A. No. My understanding is the first call would be July 3.

10 Q. How about the third call you reference here?

11 MR. HANSEN: Take that down and go to the third call
12 in paragraph 10.

13 Q. The third call, when was that?

14 A. Well, before the publication.

15 Q. That's not these calls we were just looking at, was it?

16 A. No. I believe July 3rd is the first call.

17 Q. So you didn't disclose at least some of these calls, and
18 there were others, were there not, that you didn't disclose?

19 A. I don't believe so.

20 Q. Let's look at your records then.

21 MR. HANSEN: If we can put up Exhibit 138.

22 We offer 138.

23 THE COURT: Any objection, counselor?

24 MR. GERBER: No, your Honor.

25 THE COURT: We will admit KSA 138.

LB289115

Fawcett - Cross

1 (KSA Exhibit 138 received in evidence)

2 Q. These are your records. If you look at the top of the
3 page, there is one to Mr. Isikoff on July 12; there is a second
4 one on July 12; there is a third one on July 12; and then there
5 are two more entries for August 2nd.

6 So is it fair to say, Mr. Fawcett, that you did not
7 disclose to the court all of the contacts you had with
8 Mr. Isikoff by phone in either of your declarations?

9 A. No. I think those are the calls.

10 Q. Your declaration talks about three calls, and we have just
11 shown you about ten. All of them weren't disclosed, were they?

12 A. Well, for instance, the way I kind of read this, there are
13 two calls on June 12, one is a call coming in and one is a call
14 going out. I consider those one call. Either he is calling me
15 or I'm calling him, and the other person is not answering and
16 so they return the call five minutes later. That's one call.

17 Q. The record will be what the record is.

18 Do you believe you disclosed all of your calls with
19 Mr. Isikoff in your sworn declaration?

20 A. I believe so.

21 Q. Even though you only referenced three calls?

22 A. The July 3rd calls are essentially one call.

23 Q. I see.

24 How about texts, were you aware that you were supposed
25 to tell the court about text messages as well?

LB289115

Fawcett - Cross

1 A. I don't recall.

2 Q. Did you read the court's August 30 order about what you
3 were required to disclose?

4 A. I'm sure I did.

5 Q. The court ordered you to disclose all communications with
6 Mr. Isikoff, correct?

7 A. I don't have it in front of me. I don't know.

8 Q. Do you consider text messages communications?

9 A. Yes, I would.

10 Q. You had multiple text messages with Mr. Isikoff, didn't
11 you?

12 A. I don't recall how many I had.

13 Q. Let's look at, for example, Exhibit 82. These are signal
14 messages between you and Mr. Isikoff.

15 MR. HANSEN: I am offering this also, by the way,
16 Exhibit 82.

17 THE COURT: Any objection?

18 MR. GERBER: No, your Honor.

19 THE COURT: KSA 82 is admitted.

20 (KSA Exhibit 82 received in evidence)

21 Q. So, you also communicated with Mr. Isikoff by the signal
22 channel, correct?

23 A. Yes, because the phone was not working, something is not
24 working.

25 Q. Were you aware that you had these communications with

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Fawcett - Cross

1 Mr. Isikoff at the time that you submitted your sworn
2 declarations on September 27 and September 30?

3 A. I'm not sure I really looked through my signal messages.

4 Q. Why would you not look if you were trying to be accurate
5 for the court?

6 A. I don't know. I don't have an answer to that. I was just
7 talking about the phone calls relating to the transcript.

8 Q. Actually, these are very significant texts, aren't they,
9 because they help us date when somebody provided the transcript
10 to Mr. Isikoff.

11 Let's go down to the bottom of this signal call chain,
12 the very last entry. This is on the 5th of July. This is four
13 days after Mr. Kreindler does his podcast, correct?

14 A. Correct.

15 Q. And you have been speaking with him by phone during this
16 period, correct?

17 A. Yes, I have.

18 Q. And Mr. Isikoff asks you, "Did Thumairy also invoke Vienna
19 Convention?"

20 Do you see that?

21 A. Yes.

22 Q. So we know from this text message that by July 5,
23 Mr. Isikoff has the Al Jarrah transcript, because Al Jarrah in
24 that transcript, which Mr. Isikoff then publishes about, had
25 invoked the Vienna Convention, correct?

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Fawcett - Cross

1 A. I don't know that for sure.

2 Q. Well, do you know any other reason why Mr. Isikoff would
3 know about Al Jarrah invoking the Vienna Convention?

4 A. If we had discussed it on the 3rd, yes.

5 Q. So in addition to sending the transcript, you also
6 disclosed the contents of depositions orally to Mr. Isikoff in
7 your calls, is that what you're telling us?

8 A. I remember talking about certain aspects of the deposition.

9 Q. Let's look at what Mr. Isikoff wrote after you talked to
10 him and apparently provided him with the transcript.

11 MR. HANSEN: Exhibit 40, please.

12 Q. This is his story, dated July 15.

13 MR. HANSEN: We offer Exhibit 40.

14 MR. GERBER: No objection.

15 THE COURT: KSA 40 is admitted.

16 (KSA Exhibit 40 received in evidence)

17 MR. HANSEN: Let's go to page 4, please. If we could
18 highlight the penultimate paragraph.

19 Q. Here, Mr. Isikoff writes that there was a reference to an
20 instruction not to answer on the grounds of Vienna Convention.
21 He is talking about the Al Jarrah deposition, correct?

22 A. Correct.

23 Q. And you had provided him with that information, correct?

24 A. It's in the transcript.

25 Q. And he is asking you about it as early as July 5. So can

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Fawcett - Cross

1 we conclude that you probably gave him the transcript by July
2 5?

3 A. I don't have any disagreement with that. I did give him
4 the transcript. I don't remember the exact date, but July 5
5 sounds about right.

6 Q. Let's go to July 15. This is the article that alerts
7 everyone that someone has violated the protective order by
8 giving a transcript to Mr. Isikoff.

9 Were you aware of Mr. Isikoff's article on July 15?

10 A. Yes, I was.

11 Q. I just want to be very clear about these questions.

12 Did anyone from Kreindler & Kreindler, on July 15 or
13 at any time prior to September 27, ask you directly, in words
14 or substance, John Fawcett, did you disclose the Al Jarrah
15 testimony to Michael Isikoff?

16 A. I don't recall directly, but in substance, yes, they would
17 have asked in substance.

18 Q. Why are you hesitating? Did Jim Kreindler ever come to you
19 and say, John Fawcett, did you disclose the transcript to
20 Michael Isikoff?

21 A. Not in those exact words, no.

22 Q. Did you lie to Jim Kreindler?

23 A. I misled him.

24 Q. How about Andrew Maloney, did Andrew Maloney ever come to
25 you and ask you, in words or substance, Mr. Fawcett, did you

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Fawcett - Cross

1 disclose the transcript to Michael Isikoff?

2 A. I don't remember him specifically saying that.

3 Q. At any point?

4 A. I don't remember that, no.

5 (Continued on next page)

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LB2H9116

Fawcett - Cross

1 Q. How about Megan Benett? Did Megan Benett at any point come
2 to you, in words or substance: John Fawcett, did you give the
3 Al Jarrah transcript to Michael Isikoff?

4 A. When you say "in substance," it implies there's other --
5 it's not direct, in other words, asking me directly, did you do
6 that? I don't remember them saying that, but in substance.

7 Q. When did she do that, whatever it was that was -- you're
8 referring to?

9 A. Well, I would say it's -- it was much more -- at that
10 period of time, it was much more Maloney's role.

11 Q. Let's back up. I want to make sure we're very clear about
12 that. With Mr. Kreindler you say you misled?

13 A. Yes.

14 Q. When did this happen?

15 A. I think between the time the investigation began and
16 September 27.

17 Q. How did you mislead him?

18 A. By not -- by not openly telling them that I was the source
19 of the leak.

20 Q. OK. Let's distinguish a couple of things.

21 You didn't tell them you were the source of the leak,
22 correct?

23 A. Correct.

24 Q. Did he ask you if you were the source of the leak?

25 A. Not directly, but I knew the investigation was ongoing.

LB2H9116

Fawcett - Cross

1 Q. But my question is does he come to you and say, ask you the
2 question, did you disclose this transcript?

3 A. I don't remember that, no.

4 Q. Did Megan Benett come to you and say, did you disclose this
5 transcript?

6 A. No, I don't recall that.

7 Q. Did Andrew Maloney come to you and say, did you disclose
8 the transcript?

9 A. I don't recall that.

10 Q. Did Steven Pounian come to you and say, did you disclose
11 the transcript?

12 A. No, I don't recall that.

13 Q. And by the way, you put in your own declaration that you
14 destroyed evidence, correct?

15 A. Yes, I did.

16 Q. And you knew at the time you destroyed this evidence that
17 this court proceeding, this MDL proceeding, was in progress,
18 correct?

19 A. What do you mean the "proceeding"? The investigation?

20 Q. The case.

21 A. The case was in progress.

22 THE COURT: He's referring to --

23 A. The 9/11 case?

24 THE COURT: Yes, he's referring to the 9/11 case.

25 A. The 9/11 case, certainly.

LB2H9116

Fawcett - Cross

1 Q. You knew if there was any disclosure of a protective order
2 violation, the court would have an investigation?

3 A. I wasn't -- I wasn't thinking about an investigation, no.

4 Q. It was obvious, wasn't it?

5 A. Well, it was not to me.

6 Q. Let's talk about your destruction for a minute. When did
7 you destroy the email that communicated the transcript to
8 Mr. Isikoff?

9 A. If I recall correctly, it was set on auto-destruct.

10 Q. When did you make that setting on your computer?

11 A. When I would have sent it to him.

12 Q. As early as the initial sending of the transcript, you set
13 the auto-destruct to destroy the email?

14 A. Yes.

15 Q. You're pretty sure of that?

16 A. Yes.

17 Q. How about the thumb drive on which you downloaded the
18 transcript --

19 A. Right.

20 Q. -- from the Kreindler system? You destroyed that, too, did
21 not you?

22 A. Yes, I did.

23 Q. When did you destroy that?

24 A. I don't recall when it was destroyed. I had a group of
25 thumb drives. I had four or five thumb drives. I destroyed

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Fawcett - Cross

1 them all at once.

2 Q. Well, this is pretty consequential, isn't it? It might
3 matter quite a lot when you destroyed it. Can you do your best
4 to tell us when you destroyed this information.

5 A. I really -- I thought about this, and I don't remember
6 destroying it in the sense of destroying the transcript. I was
7 getting rid of the four or five thumb drives on my desk at
8 home.

9 Q. So there's no connection between your destruction of the
10 thumb drive of this evidence and your being discovered?

11 A. No. I had a lot of thumb drive that were all -- every time
12 I was using them, they were coming up with error messages, so I
13 just --

14 Q. So it's possible that you destroyed this thumb drive after,
15 say, July 21, 2021?

16 A. I don't really remember when it was. It was sometime in
17 the summer.

18 Q. Is it possible you destroyed that thumb drive after the
19 Court issued its first orders in this matter about
20 investigations?

21 A. I don't remember which date that is.

22 Q. So you have no idea? It could have been anytime in the
23 summer?

24 A. I think it's anytime in the summer. It -- when it
25 started -- sorry.

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Fawcett - Cross

1 Q. All the way to Labor Day?

2 A. Yeah, I suppose that's correct.

3 Q. How did you destroy the thumb drive?

4 A. First I tried -- I had four or five of them. I tried to
5 open them. I was going -- fed up with them because they
6 weren't working, and I like to have one to take back and forth
7 to the office.

8 Q. Did you break it in two? Did you throw it in the trash?

9 A. No, I threw it in the trash.

10 Q. And I should have asked you this before, but when I was
11 asking about your being interrogated by Kreindler, they asked
12 you to sign a declaration, did they not, saying that you had
13 lied to them, and you refused to do it?

14 A. No, I don't recall.

15 Q. Let's look at a document that's already in evidence, which
16 is Exhibit -- sorry, here. I'll get it right for you. 121, I
17 believe. Yeah.

18 Do you recall being sent a draft in an email for you
19 by either Mr. Pounian or Ms. Benett that you then edited to
20 take out the words "until today I had told/Kreindler &
21 Kreindler that I did not know how Michael Isikoff had obtained
22 the transcript"?

23 MR. GERBER: Objection. This is an attachment. Can
24 he see the cover email to this document?

25 THE COURT: Sure. Mr. Hansen, can you just show the

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Fawcett - Cross

1 email that this draft is attached to --

2 MR. HANSEN: Yep.

3 THE COURT: -- or direct the witness. He can just
4 look at the hard copy. Here we go.

5 BY MR. HANSEN:

6 Q. There you go. That's the cover. Let me know when you're
7 ready to answer questions.

8 A. OK.

9 Q. OK. Can we go back to the text.

10 Is that edit -- I don't have to read it again. Is the
11 edit I just referenced an edit you made to this document?

12 A. Let me see the whole page.

13 Q. Sure.

14 THE COURT: It's in that binder at Exhibit 121 if you
15 want to look at a piece of paper.

16 THE WITNESS: I can see it.

17 Q. You can tell me you don't know. You can tell me yes. You
18 can tell me no.

19 A. I'm sorry. What is the question?

20 Q. Well, I'll repeat it.

21 I'm asking if you, John Fawcett, made the edit to this
22 document that's indicated in the redline in the second and
23 third lines of paragraph 3?

24 A. The edit meaning the -- the deletion with the red line?

25 Q. Yes.

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Fawcett - Cross

1 A. I'm not sure. If it's -- if this is an email from me, then
2 I would have made it. If this is an email coming back, then --

3 Q. But do you recall being presented with a declaration that
4 said you'd lied to Kreindler & Kreindler and you crossing that
5 out because you hadn't done that?

6 A. No, I don't -- I'm -- not quite understood that.

7 Q. Did you tell anyone at Kreindler & Kreindler that the text
8 of this particular document was inaccurate in lines 2 and 3 of
9 Exhibit 121?

10 MR. GERBER: Lines 2 and 3?

11 MR. HANSEN: Lines 2 and 3 of paragraph 3,
12 Exhibit 121.

13 A. I mean, I was very clear with them that I -- that the first
14 time they had heard about it was the day I signed this
15 declaration.

16 Q. I'm not asking you about that.

17 Do you have any knowledge of why this was struck out
18 in this draft?

19 A. I think because it -- maybe it doesn't just -- just doesn't
20 flow well. It's --

21 Q. Bad grammar?

22 A. Yeah, I think it's --

23 Q. Oh, please.

24 Mr. Fawcett, I'll move on to a different subject,
25 July 21. You were aware on July 21 that the defendant

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Fawcett - Cross

1 Saudi Arabia had told the Plaintiffs' Executive Committee it
2 was going to ask the Court for a court-ordered investigation of
3 this protective order violation, correct?

4 A. I don't recall.

5 Q. Well, the very next morning, according to records produced
6 in this case, you had a long phone call with Jim Kreindler,
7 didn't you?

8 A. I'll take -- I'll take your word. I don't know.

9 Q. Well, let's show you the document, the reference.

10 A. All right.

11 MR. HANSEN: If we could put up on the screen
12 Exhibit 135, Exhibit 135. These are your phone records, and I
13 will offer Exhibit 135 if it's not already in evidence.

14 MR. GERBER: No objection.

15 THE COURT: All right. KSA 135 is admitted.

16 (KSA Exhibit 135 received in evidence)

17 BY MR. HANSEN:

18 Q. If we go to the entry of 9:17 a.m., you see that on pretty
19 much first thing in the morning on the 22nd -- and I will
20 represent to you that lawyers for Saudi Arabia had sent an
21 email the day before to the Plaintiffs' Executive Committee
22 saying they were going to ask for an investigation. On the
23 22nd, you have a 46-minute call with Jim Kreindler, correct?

24 A. Yes.

25 Q. In that call you talked about the fact that you had

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Fawcett - Cross

1 provided the Al Jarrah transcript to Michael Isikoff, correct?

2 A. No.

3 Q. You strategized with Mr. Kreindler as to how you were going
4 to deal with this problem, didn't you?

5 A. No, that's not correct.

6 Q. You talked about what you would need to do to protect
7 yourself, correct?

8 A. No, that's not correct.

9 Q. What did you talk about in this 46-minute call?

10 A. I -- I don't know. That might have been a conference call
11 with others. There may have been -- I talked with Jim often.
12 Forty-six minutes is a long call. That tends to tell me it's
13 a -- it's more than one person. But I never discussed the
14 Jarrah transcript or my leaking of the Jarrah transcript with
15 anyone.

16 Q. How many times in July did you have a 46-minute call with
17 Jim Kreindler one on one?

18 A. I don't know. That's why that tends to tell me that it's,
19 you know -- we often had conference calls amongst the --
20 amongst all the people working on the case.

21 Q. Do you remember anything about what was said by you or him
22 in that call?

23 A. I don't remember, no.

24 Q. Anything of the subject?

25 A. Aside from it would not have been relating to the leak to

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Fawcett - Cross

1 the Jarrah transcript.

2 Q. What, if anything, in this call gave you concern about your
3 own criminal exposure?

4 A. I -- I don't recall anything from that call.

5 Q. Do you know a woman named Liz Crotty?

6 A. Yes, I do.

7 Q. Ms. Crotty is a criminal defense lawyer?

8 A. Yes, she is.

9 Q. Is she a personal friend of yours?

10 A. Yes, she is.

11 Q. You called Ms. Crotty, according to these records, almost
12 immediately after hanging up with Mr. Kreindler. You see that
13 right above the Kreindler call?

14 A. Yes.

15 Q. Why did you call Ms. Crotty?

16 A. She's my attorney, or she was my attorney.

17 Q. Getting legal advice from her?

18 A. I don't recall what I was doing on that, but I may very
19 well have been.

20 Q. Were you paying her from your own pocket for this work?

21 A. I didn't. I had retained her years ago.

22 Q. Who paid her fees?

23 A. She didn't charge me any fees. Aside from the day I
24 retained her, she charged me one dollar.

25 Q. I recognize that your counsel's not going to want to get

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Fawcett - Cross

1 you into privileged information, but I'll represent that you've
2 asserted privilege over your communications with Ms. Crotty.
3 But can you tell me at least the subject matter of this
4 communication?

5 MR. GERBER: Your Honor, I would just ask the Court to
6 listen very carefully just to avoid any privilege waiver here.

7 MR. HANSEN: I believe the subject of the
8 communications is not privileged.

9 MR. GERBER: Your Honor, I agree that he can even
10 speak at a very high level to the subject matter. I just want
11 to be careful the witness makes sure he understands what he can
12 and cannot get into in responding to that question.

13 THE COURT: Do you hear your lawyer, sir?

14 THE WITNESS: Sorry. I was trying to remember what we
15 were talking about.

16 THE COURT: Your lawyer said you can answer the
17 question only insofar as you can talk about the general subject
18 matter, what you were speaking with Ms. Crotty about.

19 THE WITNESS: OK.

20 THE COURT: Can you answer that question?

21 THE WITNESS: I'm not -- I don't remember this call.
22 At one point in July I had made her aware that I wanted to talk
23 to her on an attorney-client basis. I don't believe this was
24 actually -- I don't believe it was this call.

25 BY MR. HANSEN:

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Fawcett - Cross

1 Q. So somehow help me with the subject matter. Was the
2 subject matter having to do with the 9/11 case?

3 A. I don't -- actually, I don't think so. However, I believe
4 there's an email from me to Ms. Crotty which we produced.

5 MR. GERBER: Your Honor, again, to be clear, as the
6 Court said, we have asserted privilege with regard to those
7 communications.

8 THE WITNESS: Right.

9 MR. GERBER: I would ask the Court to direct my client
10 not to speak about the substance of his communications, whether
11 on the call or an email with Ms. Crotty.

12 THE COURT: OK. But, again, he can answer the
13 question about the general subject matter?

14 MR. GERBER: Yes, your Honor. Yes, your Honor.

15 THE COURT: OK. Sir.

16 THE WITNESS: I do remember a call with Liz in the
17 summer in which we talked about her having run for District
18 Attorney, and she was telling me about how she felt about it
19 afterwards and having lost, and I remember that being quite a
20 long conversation. And that's what I think --

21 BY MR. HANSEN:

22 Q. Well, that's not privileged.

23 A. -- this call was.

24 Q. That would have nothing to do with attorney-client
25 privilege if she's talking about her race for District

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Fawcett - Cross

1 Attorney. I'm asking you -- look, I don't want to waste a ton
2 of everybody's time, Mr. Fawcett. You know what I'm asking.
3 If you don't want to answer it, I guess we'll just have to
4 leave --

5 MR. GERBER: Objection.

6 Q. Here's the question. No, seriously, here's the question:
7 What was the subject matter of your call with Ms. Crotty
8 immediately after hanging up with Mr. Kreindler?

9 A. I do believe that this call was about her having run for
10 office, and we're just catching up because I had been following
11 that.

12 Q. And yet you've asserted privilege over this call?

13 A. Well, that's -- I remember there was a long call in which
14 that's what we talked about.

15 Q. I'm going to ask you again. You've asserted in good faith
16 attorney-client privilege over a call which the only thing you
17 discussed with Liz Crotty was her race for District Attorney
18 and how things were going with --

19 A. That's why I remember why it took 22 minutes, because we
20 were talking quite a bit about her running for office.

21 Q. Are you going to stand by that answer, Mr. Fawcett?

22 A. Yes.

23 Q. Recognizing the penalties of perjury are sitting here on
24 your shoulders today?

25 A. Yes.

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Fawcett - Cross

1 Q. Recognizing that your attorney's asserted privilege over
2 this communication?

3 A. Well, yes.

4 Q. So were you calling Mr. Kreindler almost immediately after
5 hanging up with Mr. -- with Ms. Crotty at 10:19 a.m. in order
6 to fill him in on the personal doings of Ms. Crotty and her
7 family?

8 A. No.

9 Q. You have a four-minute call with him. What are you talking
10 to Mr. Kreindler about immediately after you hang up with
11 Ms. Crotty?

12 A. I'm not sure which one you're talking about.

13 Q. I'm sorry. Let's see if we can highlight it. It's two up
14 above the 12:56 -- no, it's actually right here. You see the
15 sequence, 9:17 Kreindler, 10:41 Crotty, 12:56 Kreindler, five
16 minutes, immediately after hanging up with Ms. Crotty.

17 A. Well, it's about two hours after.

18 Q. It's your very next telephone call?

19 A. Yes, that's true.

20 Q. What are you talking to Mr. Kreindler about?

21 A. I don't know.

22 Q. About Ms. Crotty's family doings?

23 A. No.

24 Q. OK. Let's talk about August 30. Court issued an order on
25 August 30. Did you receive that order on August 30?

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Fawcett - Cross

1 A. Yes, I believe so.

2 Q. Did you read it?

3 A. Yes, I'm sure I did.

4 Q. Did you realize you would have to submit a declaration, a
5 sworn declaration?

6 A. Yes, I did.

7 Q. Did you realize you were going to have to turn over all of
8 your communications with Mr. Isikoff, telephone, text, emails?

9 A. If that's what the order said. I don't remember exactly
10 what the order said.

11 Q. But you realized you were going to have to do that,
12 correct?

13 A. If that's what the order said, yes.

14 Q. You didn't do it, did you?

15 A. I did. I turned over -- at least my declaration I
16 described the call.

17 Q. You want to take a look at your declaration and find me a
18 text message?

19 A. No.

20 Q. Want to take the time? We can take ten minutes here in
21 court. You can look through all five pages, but you're not
22 going to find a single text message, are you, Mr. Fawcett?

23 A. No.

24 Q. You held that information back from the court, correct?

25 A. Not deliberately. I just -- it didn't occur to me that it

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Fawcett - Cross

1 was --

2 Q. Pretty important to have a text message where the
3 reporter's asking you about invoking the Vienna Convention,
4 which is clearly evidence of a disclosure, isn't it?

5 A. I don't know. I didn't -- frankly, I just didn't recall.

6 Q. Well, after August 30, when was the first time that anyone
7 from Kreindler & Kreindler asked you directly, John Fawcett,
8 you will need to give a declaration denying your complicity in
9 the leak of the transcript to Mr. Isikoff?

10 A. Repeat the question.

11 Q. Sure. After the Court issued its order on August 30, when
12 was the first time that anyone from Kreindler told you that you
13 would have to issue -- sign a sworn declaration saying you
14 hadn't leaked the transcript?

15 A. Almost immediately. If not the same day, the day after.

16 Q. Who asked you?

17 A. It would have been either Duke and/or Megan. Those were
18 the two that were involved.

19 Q. What did Duke and/or Megan say to you at this time?

20 A. I think they just said everybody that's had access to this
21 transcript's going to have to issue a declaration.

22 Q. Did you say you'd be willing to do so?

23 A. I don't think I responded.

24 Q. You did not respond?

25 A. I think I avoided it.

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Fawcett - Cross

1 Q. OK. Going from August 30 to September 27, tell us the
2 first time that anyone from Kreindler & Kreindler forced the
3 issue, in other words, said, John Fawcett, you're going to have
4 to sign your declaration right now?

5 A. Well, the order had been stayed, and once that had run out,
6 then the order was live again. That's when they reached out,
7 which would have been two or three days before I signed my
8 declaration.

9 Q. So just let me make sure I'm understanding your answer.

10 The Court ordered that its prior order be enforced on
11 September 23. You signed your first declaration on
12 September 27. Are you telling us that it wasn't until two or
13 three days before September 27 that anyone from Kreindler &
14 Kreindler actually said you have to sign a declaration now?

15 A. I think the same day the order came out, the 23rd, they
16 would have -- I believe that would have been Megan who sent --

17 Q. And did you say, did you lie to your colleagues and say,
18 oh, sure, I'll give you a declaration saying I didn't do
19 anything?

20 A. No.

21 Q. Did you say anything?

22 A. No.

23 Q. So I'm really puzzled. The leak's on July 15. Kreindler &
24 Kreindler says they're going to do an investigation starting
25 July 15. In the two months following July 15, not a single

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Fawcett - Cross

1 person from Kreindler & Kreindler ever insisted that you give a
2 sworn declaration about whether you knew anything about the
3 leak?

4 A. I don't think there was any call for a declaration from me
5 until later. There was an investigation.

6 Q. Sir, can you answer my question?

7 A. Yeah.

8 Q. I'm not asking whether there was a call for it. Can you
9 answer my question?

10 A. Yes.

11 Q. Do you understand my question?

12 A. Well, if you can please repeat it.

13 Q. In the two-month-plus period from July 15 until
14 September 23, according to what you've just told us, no one
15 from Kreindler & Kreindler insisted that you give a sworn
16 declaration?

17 A. I think that's correct, yes.

18 Q. All right. So now I just want to finish up on your
19 declarations. Your declarations are false, aren't they,
20 Mr. Fawcett?

21 A. They were not false at the time. There are some things in
22 there now that I realize are incorrect.

23 Q. False, right? False?

24 MR. GERBER: Your Honor, is there a question?

25 Q. Your declarations are false, not just not well worded. You

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Fawcett - Cross

1 gave false testimony, didn't you, Mr. Fawcett?

2 A. Not at the time.

3 Q. It's either true or it's false. Is it false or is it true,
4 your testimony?

5 A. At the time I gave those, I thought they were true, and now
6 realize some of it is not true.

7 Q. Well, let's actually unpack some of that. We're going to
8 talk, first, about your September 27 declaration.

9 You actually prepared a draft of the declaration for
10 yourself, which is Exhibit, if I can get it in front of me,

11 108A. So let's put that one up.

12 Do you recognize this document?

13 A. Yes, I do.

14 Q. You drafted this, didn't you?

15 A. I did.

16 Q. On your own computer?

17 A. Yes, I did.

18 Q. In your own words?

19 A. Yes.

20 Q. Did you think it was accurate when you wrote it?

21 A. Yes.

22 Q. You weren't trying to lie to anybody when you wrote this
23 declaration, were you?

24 A. No, I wasn't.

25 Q. So what you say in this declaration that you wrote, without

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Fawcett - Cross

1 any help from Kreindler & Kreindler, is, and I'm going to the
2 first paragraph:

3 "I sent a redacted version of the transcript of the
4 deposition of Musaed Al Jarrah to Michael Isikoff in early
5 July 2021. The redacted portions related to the sections of
6 the deposition which were taken subject to the FBI protective
7 order and irrelevant to the issue at hand."

8 So what you're saying there is the reactions were
9 redactions were done by the court reporter and had been taken
10 out of the transcript, correct?

11 A. Yeah, that's right.

12 Q. So what you're telling us in your declaration here is that
13 you've sent the whole transcript to Mr. Isikoff, correct?

14 A. With the -- with the FBI material redacted, yes.

15 Q. That was done by the court reporter for those questions and
16 answers, right?

17 A. Yes, that's right.

18 Q. But you didn't send portions of the 610-page transcript,
19 did you?

20 A. Was a portion, yes. It was all of it except for the
21 material subject to the FBI.

22 Q. It was the entire transcript with blackouts on some of the
23 pages, correct?

24 A. Yeah, it was quite a lot of blackouts because --

25 Q. But there were pages. The entire transcript was sent by

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Fawcett - Cross

1 you to Mr. Isikoff, correct?

2 A. Right, without the FBI-protected material.

3 Q. So now I want to look -- the first thing I want to focus on
4 is whether your declaration is true or false. If you go to
5 62A, which I believe was part of your direct testimony, it was
6 admitted by the Court. We go to paragraph 2, you say: "I sent
7 a redacted version of the transcript to Michael Isikoff. The
8 redacted portions of the deposition I sent to Michael Isikoff
9 were focused on Musaed Al Jarrah's testimony about his
10 possession of" something.

11 Is that a true statement?

12 A. Actually, that sentence doesn't really make any sense.

13 Q. It's your declaration.

14 A. I realize.

15 Q. You signed it.

16 A. I realize.

17 Q. Did you read it?

18 A. Yes.

19 Q. Not hard to read, is it?

20 A. It's a sentence that makes no sense. It's tough to read it
21 now.

22 Q. Ms. Benett and Mr. Pounian wrote it, didn't they?

23 A. They took my declaration, my draft, and edited it, yes,
24 into this.

25 Q. These aren't your words, they're their words, aren't they?

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Fawcett - Cross

1 A. It looks to me like that sentence makes no sense. It's
2 like something that was cut out of here.

3 Q. Makes plenty of sense, plenty of sense. This sentence
4 discloses to the court that you didn't send the whole
5 transcript, all 610 pages, you sent only the 30 pages that had
6 to do with the child issue, right?

7 A. No, no, the sentence makes no sense, the redacted portions.

8 Q. The portions of the deposition I spent to Michael Isikoff
9 were focused on, so that suggests to the reader that you sent
10 only portions of the transcript, and they were portions that
11 were focused on a particular issue, isn't that right?

12 A. No, it doesn't make any sense. The redacted portions are
13 not Musaed Al Jarrah's testimony about child pornography.

14 Q. How many of the 610 pages --

15 A. Redacted portions were the FBI material. That's why this
16 sentence doesn't make any sense.

17 Q. It makes plenty of sense, and what you're saying here is
18 trying to minimize what you did. And that's Mr. Pounian and
19 Ms. Benett are trying to do, aren't they?

20 A. No, I think in the pace of doing this, I've got a very poor
21 sentence in my --

22 Q. There were 610 pages in the deposition transcript, correct?

23 A. I don't recall the number.

24 Q. Can you give me a ballpark figure?

25 A. It would be something like that, yes.

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Fawcett - Cross

1 Q. The number of pages that dealt with the photo issue, by our
2 count, it was roughly about 30. Does that sound right to you?

3 A. No, that -- that portion of the deposition needs to be read
4 in conjunction with other portions.

5 Q. That part of the deposition has nothing to do with how many
6 times a witness invoked "I don't know," does it?

7 A. I don't know.

8 Q. Mr. Fawcett, please, if the only issue you were concerned
9 about was the images on someone's computer, you could and would
10 have sent the pages from the deposition that dealt specifically
11 with that issue, couldn't you?

12 THE WITNESS: Your Honor, to -- to answer that
13 correctly, I need to talk about other --

14 Q. I'm not asking for your attorney advice. I'm asking could
15 you --

16 THE COURT: Out of other portions of the deposition?

17 THE WITNESS: Yes, I would need to relate it to the
18 issue of child pornography to other portions of the deposition.

19 THE COURT: I think I know what the witness is
20 referring to, but do you want to have a sidebar?

21 MR. HANSEN: I think I can make the question
22 completely innocuous.

23 BY MR. HANSEN:

24 Q. There were questions on the record at the deposition about
25 images on the witness' computer, correct?

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Fawcett - Cross

1 A. Yes.

2 Q. Those questions consumed no more than 30 pages of the
3 transcript, correct?

4 A. No, they related to previous portions of the transcript as
5 well.

6 Q. I'm just asking you weren't the portions about that subject
7 about 30 pages?

8 MR. GERBER: Objection. Asked and answered.

9 MR. HANSEN: He hasn't answered it yet.

10 MR. GERBER: Yes, he has.

11 THE COURT: You can answer the question.

12 A. They related to other portions of the transcript as well.

13 Q. I'm not asking you -- so let's just be clear. We're
14 talking about you sitting here having admitted to criminal
15 conduct and facing another possible perjury charge. Are you
16 telling this Court you had to send every one of these 610 pages
17 because every one of those 610 pages dealt with the images on
18 Mr. Al Jarrah's computer?

19 A. No.

20 Q. But you sent all 610 pages, didn't you?

21 A. Yes, I sent the complete transcript without the FBI
22 material.

23 Q. So let's look at some other things that are false here.

24 Next sentence down, paragraph 2: "I did not send any
25 FBI protected portions of the deposition to Michael Isikoff."

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Fawcett - Cross

1 That too was false, wasn't it?

2 A. I now realize that's correct, that's now false.

3 Q. Did you think that maybe before you sent a sworn statement
4 to a court in a matter as serious as this, you'd go check the
5 protective order to see whether you were right?

6 A. In hindsight, yes, I should have done that.

7 Q. How about all these nice lawyers at Kreindler & Kreindler?
8 How many different lawyers were you talking to during this
9 time?

10 A. During which time?

11 Q. Sorry?

12 A. I'm sorry, during which time? What are we talking about?

13 Q. The time you're working on this sworn statement of yours.

14 A. Just Megan and Steve.

15 Q. They're experienced lawyers?

16 A. Yes.

17 Q. Do you think maybe they understood the protective order?

18 A. I don't know what --

19 Q. Did either Megan Benett or Steve Pounian say to you, John
20 Fawcett, you can't say this in your deposition -- in your
21 declaration because it's not true. This transcript was all
22 covered by the FBI protective order?

23 A. I don't -- I don't recall that, no.

24 Q. They didn't warn you one bit, did they?

25 A. Well, I think they were -- they were -- I shouldn't say

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Fawcett - Cross

1 what they were thinking. I don't really know what they were
2 thinking.

3 Q. They didn't understand the protective order either, is that
4 what you're trying to tell me?

5 A. No, that's not what I'm saying.

6 Q. It's either one of two things: Either they're clueless
7 about the protective order, in which case they shouldn't be
8 practicing in this court, or they knew about the protective
9 order, and they deliberately let you put in false testimony,
10 isn't that true?

11 MR. GERBER: Objection, your Honor.

12 THE COURT: What's the objection?

13 MR. GERBER: Your Honor, several things: One, the
14 question's incredibly confusing. Second, he's asking him to
15 speak about the state of mind or knowledge of third parties. I
16 don't see how he could possibly answer this question.

17 THE COURT: All right. I'll sustain the objection.

18 MR. HANSEN: All right. Let me rephrase it, because I
19 think it's an important question, and it's a clear question.

20 Q. It's one of two things, isn't it, Mr. Fawcett: Either
21 these lawyers themselves didn't understand the protective order
22 or they understood it and knew what you were writing was wrong
23 and let you do it anyways, isn't that true?

24 A. I don't know.

25 Q. Let's go to another falsehood in your statement.

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Fawcett - Cross

1 Paragraphs 3, you write: Until today, no one other than
2 Michael Isikoff and I knew that the redacted transcript -- knew
3 that I sent the transcript.

4 Hadn't you told your criminal defense attorney, Liz
5 Crotty, that you'd sent this transcript long before you filed
6 this?

7 MR. GERBER: Objection, your Honor. This is getting
8 into privileged information.

9 MR. HANSEN: I don't think you can commit perjury
10 under the shield of privilege. He's put in a sworn statement.
11 He's opened the door to that.

12 MR. GERBER: Your Honor, the factual question --
13 counsel is asking the witness to describe what information he
14 provided to Ms. Crotty. That's privileged.

15 THE COURT: I think your witness' -- your client's
16 testimony to date has been that he did not discuss any of this
17 with Ms. Crotty. I know you've asserted his Fifth Amendment
18 privilege on his behalf, but he has testified so far under oath
19 that he did not discuss with Ms. Crotty anything beyond her
20 election campaign.

21 MR. GERBER: Your Honor, he was asked about a single
22 phone call, and he gave that testimony about that phone call.
23 I think it's not disputed that there were other communications
24 with Ms. Crotty. I don't think that's -- the question here is
25 not being limited to that particular phone call. He's being

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Fawcett - Cross

1 asked more generally if he spoke with counsel, if he told
2 counsel particular information. It would just --

3 THE COURT: I think he can answer the question, did
4 you tell anyone other than Michael Isikoff that you had sent
5 the transcript to Michael Isikoff, and if so, who?

6 MR. GERBER: Yes, your Honor.

7 THE COURT: OK.

8 BY MR. HANSEN:

9 Q. Did you hear that question, Mr. Fawcett?

10 A. No, I didn't quite understand.

11 Q. Did you tell anyone other than Michael Isikoff -- did you
12 communicate to any human being prior to filing this sworn
13 statement that you had sent the redacted transcript to Michael
14 Isikoff, attorneys included?

15 A. Not prior to that date.

16 Q. Not prior to September 27?

17 A. Not prior to, that's what I remember.

18 Q. OK. Let's wrap up here.

19 In the declaration that you wrote, you said nothing
20 about your supposed personal interest in the Al Jarrah
21 material, right?

22 A. I'm not sure what you mean.

23 Q. Well, you give a long -- or your friends at Kreindler &
24 Kreindler give a long story in the declaration about why you
25 thought you had to violate the protective order and smear

LB2H9116

Fawcett - Cross

1 Mr. Al Jarrah's reputation. Remember that?

2 A. I don't think anybody asked me to smear Mr. Al Jarrah.

3 Q. That's what you did, isn't it?

4 A. No, that's not what I did.

5 Q. OK. Well, let's look at your version of your statement.

6 It's at 108A. We'll put it up.

7 Do you see any reference in there to your supposed
8 personal interest in taking this action?

9 A. I'm not sure what you mean by "personal interest."

10 Q. I'm not sure either. Let's go to what Mr. Pounian and
11 Ms. Benett wrote for you in Exhibit 62A, fourth paragraph, very
12 end. 62A, you write: "I had a personal interest because." Is
13 that your wording?

14 A. Yes.

15 Q. So you said to me a minute ago you didn't know what
16 "personal interest" meant, and yet you used this very phrase in
17 this declaration, right?

18 A. Yes.

19 Q. And that wasn't in your version of your declaration, was
20 it?

21 A. No, it wasn't.

22 Q. That was added by Mr. Pounian or Ms. Benett, correct?

23 A. I believe we talked about it on the phone.

24 Q. But it was written in there by Mr. Pounian or Ms. Benett,
25 correct?

LB2H9116

Fawcett - Cross

1 A. They put -- they forwarded this draft to me after -- after
2 maybe two phone calls, two long phone calls.

3 Q. And you signed it just like you signed other things that
4 you now realize were incorrect, right?

5 MR. GERBER: Objection to the form, your Honor. I
6 want to be clear. I want to make sure the witness understands
7 the question. I think the form is confusing. I would ask the
8 counsel to rephrase.

9 THE COURT: Sustained.

10 Can you rephrase the question?

11 MR. HANSEN: Of course, your Honor.

12 Q. You signed what Mr. Pounian and Ms. Benett wrote for you,
13 correct?

14 A. No, I signed what I believed to be a correct declaration at
15 the time.

16 Q. Well, actually, you've already told us you didn't. Earlier
17 in your testimony, you told us that you signed things you now
18 look at and say were either wrong or you don't even understand.

19 A. At the time I signed them, I felt that was my declaration.

20 Q. And this was written, prepared on a Kreindler & Kreindler
21 computer system, correct, the one you signed?

22 A. I don't recall if they -- I believe they sent me a Word
23 file, and I think I converted it into a PDF possibly on my
24 computer. I'm not quite sure.

25 Q. Don't remember, is that right?

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Fawcett - Cross

1 A. Yeah.

2 Q. And you say, at least in the version that they prepared,
3 these things about your motivation. Let's go through that, and
4 then we'll be done.

5 The information about this child issue was 20-year-old
6 information, wasn't it?

7 A. I'm not sure what we're talking about.

8 Q. The information about what was found on the witness'
9 computer was 20 years old, wasn't it?

10 A. It was about 15 years old. The way I understand, it was
11 found on the computer about 2004, 2005, something like.

12 Q. Well, 2004 is 17 years ago, right?

13 A. Yes.

14 Q. And you knew about that information long before the
15 Al Jarrah testimony, correct, because you helped Ms. Benett
16 prepare for it and had that questioning prepared?

17 A. Correct.

18 Q. So when did you first learn about this?

19 MR. GERBER: Objection, just to clarify what the
20 "this" is.

21 Q. I'm sorry. The information that you claimed to be so
22 concerning to you, when did you first learn about it in
23 reference to the deposition itself?

24 A. Maybe six to eight months prior to the deposition.

25 Q. And you talked to Ms. Benett about it during the eight

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Fawcett - Cross

1 months preceding the deposition, correct?

2 A. Mostly in the few weeks before the deposition.

3 Q. But how about before the week? Did she also know this
4 information was out there?

5 A. I don't recall when I first told Megan.

6 Q. But certainly was before the deposition itself, wasn't it?

7 A. Yes, it was.

8 Q. And in those six or eight months when you have this
9 information you claim caused you so much concern, you took no
10 action to warn anybody, did you?

11 A. It was unconfirmed. It was rumor. I didn't -- I didn't
12 know it. I had been told it.

13 Q. You took no action, correct?

14 A. I tried to confirm it.

15 Q. Did you take any action?

16 A. Yeah, that's action.

17 Q. So who confirmed it? Did someone confirm it for you?

18 A. I didn't get -- I didn't get more confirmation than from
19 the source that had told me about it.

20 Q. Who's the source?

21 MS. KIRSCH: Objection, your Honor.

22 THE COURT: Sustained.

23 Q. So you're telling us it was just an idle rumor before the
24 deposition?

25 A. I wouldn't call it an idle rumor. It was --

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Fawcett - Cross

1 Q. Was it enough to concern you?

2 A. Absolutely.

3 Q. So why didn't you take action before the deposition?

4 A. I had nothing to back it up.

5 Q. So this 20-year-old, 17-year-old information was
6 information that the United States government had, correct?

7 A. Yes, that's correct.

8 Q. So you, John Fawcett, are not a law enforcement officer,
9 are you?

10 A. No, I'm not.

11 Q. You don't have the power of the United States government,
12 do you?

13 A. No, I don't.

14 Q. The United States government has full power to protect
15 anybody who's in danger through its own offices, doesn't it?

16 A. I don't -- I don't understand what you mean.

17 Q. Well, if the government thinks there's a threat or concern,
18 the government can take action, can't it?

19 A. Presumably, yes.

20 Q. Did you ask our government to take any action after the
21 Al Jarrah deposition?

22 A. No, I didn't.

23 Q. The country you claim you were worried about is a U.S.
24 ally, correct?

25 A. We're talking about Saudi Arabia?

LB2H9116

Fawcett - Cross

1 Q. How about Morocco?

2 A. About Morocco? Yeah, I suppose.

3 Q. They have an embassy in this country?

4 A. Yes, they do.

5 Q. So when did you first go to the Moroccan embassy to
6 register your complaint?

7 A. I didn't.

8 Q. The country of Morocco has law enforcement, too, doesn't
9 it?

10 A. I'm sure it does.

11 Q. They cooperate with our law enforcement authorities, don't
12 they?

13 A. I presume they do.

14 Q. When did you first go to Moroccan law enforcement
15 authorities to register your concerns?

16 A. I didn't.

17 Q. No, what you did instead was this, Mr. Fawcett. You took
18 doubly protected confidential information, leaked it to a
19 reporter as part of Jim Kreindler's press campaign to pressure
20 the government of Saudi Arabia and smear witnesses who wouldn't
21 confirm his libelous story. That's what you did, isn't it,
22 Mr. Fawcett?

23 MR. GERBER: Objection, your Honor.

24 THE COURT: Hold on.

25 MS. KIRSCH: This is not television. Objection.

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Fawcett - Cross

1 THE COURT: All right. Let's rephrase the question,
2 please, sir.

3 Q. What you did, instead of all the things we just went
4 through, Mr. Fawcett, is you leaked the entire 610-page
5 transcript to a U.S.-language reporter for publication,
6 correct?

7 A. I didn't expect him to public -- to make the transcript
8 public, no.

9 Q. So what assurances did you have that he wouldn't?

10 A. We talked about what I thought was important in the
11 transcript, which was the child pornography.

12 Q. Did you --

13 A. And he agreed with me that was an important topic, and he
14 wanted to write about the child pornography and the FBI's use
15 of that child pornography.

16 Q. Wait, wait, wait, wait. Did you make a deal with
17 Mr. Isikoff that he would only publish part of this transcript
18 you gave him?

19 A. He told me that's what he was going to do his story on. I
20 trusted him. I know he's a legitimate, valid journalist. And
21 that's what he did.

22 Q. So we see various emails and messages from you to
23 Mr. Isikoff after the publication. When did you complain to
24 Mr. Isikoff that he breached your agreement?

25 A. He didn't breach my agreement.

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Fawcett - Cross

1 Q. What you did, Mr. Fawcett, was smear a witness who had
2 refused to confirm your law firm's story in this case, and you
3 were doing it as a message to other witnesses that if they did
4 the same thing, they'd be smeared, too. Isn't that what you
5 were doing?

6 MS. KIRSCH: Your Honor, I'm going to object to the
7 question, but I'd also just like to note for the record that
8 it's actually Mr. Hansen who's talked extensively about the
9 content of the --

10 MR. HANSEN: Oh, that's not true. You've been -- all
11 over the map, Ms. Kirsch.

12 MS. KIRSCH: I'm sorry.

13 MR. HANSEN: I'm not going to listen to that.

14 THE COURT: Hold on, Mr. Hansen.

15 MS. KIRSCH: The understanding was, I think your
16 Honor's order was, that we could talk about the issue of child
17 pornography; that we shouldn't be discussing exactly what is or
18 is not in the Jarrah transcript. This is about the third time
19 now that there's been a discussion by Mr. Hansen about what may
20 be or may not be in the Jarrah transcript. So it's the Kingdom
21 that's actually not following your Honor's order, and I think
22 that it seems like it's waived. That we could talk about the
23 content if we wanted to.

24 MR. HANSEN: Completely false. I haven't said a thing
25 about it other than it's images on the guy's computer, and

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Fawcett - Cross

1 they've gone far beyond. Ms. Benett this morning went in
2 graphic details. I'm just asking him if what he did was smear
3 a witness who'd been uncooperative, and I didn't say a word
4 about --

5 THE COURT: I don't think Mr. Hansen has crossed the
6 line as to my prior order, and this is, obviously, the subject
7 of the article, which is what brings us all to this court here
8 today. So I don't --

9 MS. KIRSCH: Your Honor --

10 THE COURT: I don't think -- nor do I think that he is
11 past the bounds of what's relevance. I'm not sure what you
12 mean by you want to open it up and start talking about the
13 deposition.

14 MS. KIRSCH: Well, your Honor, I would say this: That
15 question was just packed with information that what Mr. Fawcett
16 did amount to smearing a witness because the allegations that
17 the witness denied that he had those images on his computer.
18 So if we're going to talk about the witnesses' denial, that's
19 the content of the deposition as opposed to that which is
20 relevant for Mr. Fawcett's motivation.

21 MR. HANSEN: Convolutd beyond belief.

22 MS. KIRSCH: I don't think so, your Honor. I think
23 it's quite clear.

24 MR. HANSEN: I'm asking what he is doing. He's free
25 to deny it. What he was doing was smearing a witness, whether

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Fawcett - Cross

1 true or not.

2 THE COURT: I think Mr. Hansen is free to ask about
3 the witness' motivation, which he has put in the record by
4 saying that he had a motive when he released the transcript,
5 and I think Mr. Hansen is free to ask what that motive was.

6 MS. KIRSCH: I understand, your Honor, but if we are
7 precluded from discussing what Mr. Jarrah may have said in
8 response to the questions --

9 MR. HANSEN: Doesn't matter whether it's true or not.
10 It's still a smear.

11 MS. KIRSCH: -- I don't think Mr. Hansen should be
12 permitted to acknowledge or to say that there was a denial. We
13 need to be able to discuss both sides of that, and the order --

14 MR. HANSEN: I'm --

15 THE COURT REPORTER: I'm sorry, Judge. I cannot do
16 this.

17 MS. KIRSCH: That's because Mr. Hansen's not letting
18 me finish.

19 MR. HANSEN: Well, she's not --

20 THE COURT: I will give everybody an opportunity to be
21 heard in my court.

22 Ms. Kirsch.

23 MS. KIRSCH: Thank you.

24 There has been -- there have been representations in
25 the questions by Mr. Hansen about what Mr. Jarrah did or did

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Fawcett - Cross

1 not say in answer to the questions about the child pornography
2 on his computer. Therefore, I would say that that's not in
3 compliance with your Honor's order and that we should be able
4 to respond to that because we don't think that's an accurate
5 representation, and there's more to the story than that.

6 So we were ordered not to talk about the content of
7 the transcript, and we kept to that. We hardly even talked
8 about child pornography at all, but we certainly didn't talk
9 about what was said on the transcript or what was not said on
10 the transcript. Mr. Hansen is making -- is having that
11 discussion.

12 THE COURT: Mr. Hansen.

13 MR. HANSEN: My turn?

14 THE COURT: Yes.

15 MR. HANSEN: I haven't said one word about what she
16 says that I said. I asked him about his motivation. I did not
17 ask about what Mr. Jarrah said or didn't say. I asked him if
18 contrary to what his motivation in his sworn statement was, he
19 was really just trying to smear the witness, and that's a fair
20 question, as your Honor has ruled. And I think Ms. Kirsch
21 ought to actually abide by the rulings instead of making
22 20-minute objections at every legitimate question here.

23 Go ahead. Look at me that way. That's fine.

24 THE COURT: Go ahead, Ms. Kirsch.

25 MS. KIRSCH: I'm just waiting for a ruling.

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Fawcett - Cross

1 THE COURT: Go ahead. Oh, a ruling.

2 Yes, I think that whether it's true or not that the
3 witness had this on his computer, whether he saw these images
4 or not is not the purpose of today's hearing, and so we're not
5 going to have collateral litigation about what the witness has
6 said or didn't say in response to deposition questions.

7 What Mr. Fawcett has put squarely in the court's --
8 the center of this court hearing is his own motivations, which
9 he has indicated were because of his concerns about the
10 children in Morocco, and I think Mr. Hansen is fair game to ask
11 questions about whether he had other motives than the motives
12 of protecting the children. So I think this line of
13 questioning is reasonable, so I'll allow it.

14 Go ahead, Mr. Hansen.

15 MR. HANSEN: Ms. Kirsch is still standing, so I want
16 to make sure she gets a chance to talk all she wants.

17 THE COURT: Mr. Hansen, focus on the witness, please.

18 BY MR. HANSEN:

19 Q. Can you answer the question, Mr. Fawcett? I'm done if
20 there's an answer to that question.

21 A. Could you repeat the question?

22 THE COURT: Madam Court Reporter, do you think you
23 could find it?

24 MR. HANSEN: It's probably so far back, your Honor,
25 I'll spare our poor, tired court reporter and just ask it

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Fawcett - Cross

1 again.

2 Q. Mr. Fawcett, wasn't your real motivation in releasing the
3 entire Al Jarrah transcript to Mr. Isikoff to smear a witness
4 who had been uncooperative with you?

5 A. No, that's not correct.

6 MR. HANSEN: If I could have five minutes, your Honor,
7 I think I may be done.

8 THE COURT: OK. Take a quick five-minute recess, and
9 then, Mr. Gerber, you'll be next, so if you also want to use
10 this opportunity to prepare any redirect.

11 MR. GERBER: Thank you, your Honor.

12 (Recess)

13 THE COURT: Mr. Hansen.

14 MR. HANSEN: Your Honor, we've concluded our
15 examination.

16 THE COURT: OK. Thank you.

17 THE WITNESS: Your Honor, may I correct an answer?

18 THE COURT: Sure.

19 THE WITNESS: While I was sitting here, I recalled
20 something.

21 THE COURT: Mr. Hansen, would you like to stand up?
22 He'd like to correct an answer.

23 MR. HANSEN: I'm sorry, your Honor, because I have a
24 cold, I can't hear.

25 THE COURT: Mr. Fawcett would like to correct an

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Fawcett - Cross

1 answer that he gave you previously.

2 MR. HANSEN: Actually, he can do that with his own
3 counsel. I don't think you get to correct answers after
4 they've been given. I think his cross-examination's done. His
5 own counsel can elicit from him what he wants to tell us.

6 THE COURT: OK. Fair enough.

7 All right. Mr. Gerber -- oh, you're going to go
8 first?

9 MR. GERBER: Your Honor, in light of our position
10 regarding the Fifth Amendment and our standing objection to the
11 direct examination of the witness regarding -- or
12 cross-examination of the witness regarding the declarations, we
13 are not going to redirect the witness.

14 THE COURT: OK. Do you want to deal with the issue he
15 just raised, or you want Ms. --

16 MR. GERBER: Yes, your Honor, I do think however the
17 Court wants to do it, to the extent the witness wants to
18 correct the record, he should have opportunity to do so. Your
19 Honor, we don't want to waive our Fifth Amendment position, as
20 the Court understands, I'm sure.

21 THE COURT: I do understand.

22 All right. Why don't I give the witness an
23 opportunity to say what he wants to say.

24 And, Mr. Hansen, you'll have an opportunity to ask any
25 follow-up questions at the end. Is that satisfactory to you?

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Fawcett - Cross

1 MR. HANSEN: Yes, your Honor. Thank you.

2 THE COURT: OK. Mr. Fawcett, what would you like to
3 correct?

4 THE WITNESS: Thank you.

5 During the break there, I recalled the conversation
6 with Liz Crotty in July. I remember calling her after the
7 Court's order had come out, so I was calling her about this
8 Court's order. And I remember telling her on the phone: I'd
9 like to come see you, Liz, about an issue. And she said:
10 Well, I'm not going to be here. I'm leaving. I'll be back in
11 a couple of weeks.

12 And then we -- I didn't tell her why I wanted to talk
13 to her on the phone, and then the rest of the conversation was
14 about her campaign. So it was correct that I had originally
15 called her about attorney-client -- attorney-client relations
16 because I saw the court order. Had nothing to do with the call
17 to Jim Kreindler.

18 THE COURT: It had nothing to do with?

19 THE WITNESS: The call to Jim Kreindler that I had
20 just done previously. It was because the order had come out
21 the day before, and I was --

22 THE COURT: OK. Thank you.

23 MR. HANSEN: I'm sorry, your Honor. Should I -- can I
24 follow-up?

25 (Continued on next page)

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Fawcett - Cross

1 THE COURT: Sure.

2 BY MR. HANSEN:

3 Q. So this has nothing to do with your call on the 22nd to Ms.
4 Crotty, some subsequent call?

5 A. No. That's the call I'm talking about.

6 Q. The subject matter of your call on the 22nd is you want to
7 come get legal advice because of the position you're in because
8 of leaking the transcript?

9 A. Correct.

10 Q. And you are making that call after 44 minutes with Mr.
11 Kreindler, where you talked about the leak issue?

12 MR. GERBER: Your Honor, the way that counsel is
13 characterizing the witness's testimony I think is not accurate,
14 and I think it's actually quite important. Because counsel
15 described it as the witness saying he had told Ms. Crotty the
16 substance regarding the leak. I actually don't think that's
17 what the witness --

18 MR. HANSEN: He can't testify. The witness just
19 testified.

20 THE COURT: I think the witness did testify that he
21 wanted to speak with her about possible defense issues or
22 retention, but I think the witness did not testify that he told
23 her that he had leaked the transcript.

24 MR. HANSEN: The question I asked was, was the subject
25 matter of your conversation about the leak issue? Not about

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Fawcett - Redirect

1 whether he leaked, but that was the subject matter for his
2 wanting to see her. And he said yes. And I think that's fair
3 testimony.

4 THE COURT: Are you done?

5 BY MR. HANSEN:

6 Q. Your concern about this issue was prompted by your 44
7 minutes with Jim Kreindler immediately before calling Liz
8 Crotty, correct?

9 A. No, that's not correct.

10 MR. HANSEN: No further questions.

11 THE COURT: Thank you.

12 Ms. Kirsch, your witness.

13 REDIRECT EXAMINATION

14 BY MS. KIRSCH:

15 Q. Good afternoon, Mr. Fawcett. I am Emily Kirsch. I am
16 counsel for Kreindler & Kreindler. I am just going to ask you
17 a few questions, if that's all right with you.

18 Before I ask the very few questions that I have, could
19 you tell us a little bit just about your professional
20 background so we understand what it is that you do and who you
21 are?

22 MR. HANSEN: I object. This has nothing to do with
23 the cross-examination, nothing to do with his direct
24 examination. This is redirect examination on a new subject.
25 We have been here a long time. We don't want a human interest

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Fawcett - Redirect

1 story.

2 THE COURT: She said she is going to be quick. I will
3 allow her to ask background questions about Mr. Fawcett's
4 professional experience.

5 BY MS. KIRSCH:

6 Q. Mr. Fawcett, would you tell us a little bit about your
7 professional background? And the second part of that question
8 will be, even in your declaration, you mention that you have
9 worked for the 9/11 families for a long time. So if you could
10 tell us a little bit about your professional background prior
11 to working for the 9/11 families and then describe your work
12 for the 9/11 families. Just briefly so we have some grounding.

13 A. I worked approximately ten years in oil exploration in the
14 Middle East, in Turkey. I worked for a humanitarian aid
15 organization in Iraq, and in former Yugoslavia, and some other
16 countries, including Pakistan, Afghanistan. Then I worked more
17 in the human rights field, particularly focused on financing
18 and dictators. That was prior to coming to Kreindler.

19 Q. The work that you do with the 9/11 families, or that you
20 have done for the past 20 years, can you describe that
21 generally, please?

22 A. I consider myself largely a researcher. I don't think I am
23 an investigator. I look at documents. So I'm part of the
24 whole analysis of the discovery material gathered. In
25 addition, I spent a lot of time engaging with the families and

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Fawcett - Redirect

1 essentially educating them about the progress of the case.

2 Q. So, Mr. Fawcett, have you ever heard Mr. Kreindler talk
3 about the protective orders in this case, particularly the fact
4 that he doesn't like them?

5 A. Yes.

6 Q. Did Mr. Kreindler ever suggest to you any way, either
7 directly or tacitly or indirectly, that the orders should not
8 be followed because he doesn't like them?

9 A. No.

10 Q. Can you describe what sense you got from Mr. Kreindler
11 about the importance of the protective orders and following
12 them?

13 A. We had to follow them. Everyone in the case had to follow
14 him. It wasn't just Jim, it was the Kreindler firm. At the
15 same time, I know that they didn't like having to hide
16 material, withhold material from their clients. That was a
17 very, very difficult thing for them to do, for all of us to do.

18 Q. Did anybody at the Kreindler firm, Mr. Kreindler or anyone
19 else, ever suggest that there would ever be a time when it
20 would be OK to violate the protective orders?

21 A. No.

22 Q. Did you ever have any reason to believe that Mr. Kreindler
23 would not object to your sending the Jarrah transcript to
24 Mr. Isikoff?

25 A. I'm not quite sure.

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Fawcett - Redirect

1 Q. Let me give you a better question. Let me start at the
2 beginning.

3 Did Mr. Kreindler suggest to you that you should send
4 the Jarrah transcript to Mr. Isikoff?

5 A. No, he did not.

6 Q. Did Mr. Kreindler ever suggest to you in some sort of
7 indirect or tacit way that you should send the Jarrah
8 transcript to Mr. Isikoff?

9 A. No. No, never.

10 Q. Did Mr. Kreindler give you any reason to believe that he
11 would condone your sending the Jarrah transcript to
12 Mr. Isikoff?

13 A. No.

14 Q. Did you ever believe that Mr. Kreindler might condone your
15 sending of the Jarrah transcript to Mr. Isikoff?

16 A. No.

17 Q. Did you ever believe that any of the Kreindler & Kreindler
18 lawyers would condone your sending of the Jarrah transcript to
19 Mr. Isikoff?

20 A. No. It would be the opposite. They would tell me not to
21 do it. That was my opinion.

22 Q. Is that the reason you took steps to hide it from them,
23 because you knew they would tell you not to?

24 A. Yes, that's right.

25 Q. There was some discussion about exactly what the words were

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Fawcett - Redirect

1 when the Kreindler & Kreindler lawyers, either Mr. Maloney, Mr.
2 Pounian or others, asked you about this leak.

3 Is it fair to say, Mr. Fawcett, that you think you
4 misled them with respect to what you knew about who sent the
5 Jarrah transcript to Mr. Isikoff?

6 MR. HANSEN: Your Honor, I have been letting Ms.
7 Kirsch go on with her leading questions for two days. Really,
8 there ought to be an end. She should ask nonleading questions.
9 It's her witness. She is just reploting the same ground they
10 plowed in the original declarations. If she is going to do
11 something, it should be proper examination with direct
12 questions. This is not cross-examination. She hasn't asked a
13 nonleading question yet.

14 THE COURT: I don't believe that Mr. Fawcett is her
15 witness. He is represented by Mr. Gerber. And we are here at
16 a bench trial, essentially. So I will allow Ms. Kirsch to
17 continue with that line of questioning.

18 BY MS. KIRSCH:

19 Q. I am not sure if we got an answer to my last question.

20 A. Can you repeat the question?

21 Q. Sure. Did you mislead the Kreindler lawyers with respect
22 to what you might have known about who leaked the Jarrah
23 transcript?

24 A. I don't know if that's the right word. I certainly
25 prevaricated and dissembled and avoided letting them know.

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Fawcett - Redirect

1 Q. Mr. Fawcett, Mr. Hansen had asked you a series of questions
2 about, if you had known about Mr. Jarrah's child pornography
3 for so long, why did you not take action sooner?

4 My question is, at any time before the Jarrah
5 deposition, did you have confirmation that Mr. Jarrah was in
6 fact consuming and possibly trafficking child pornography?

7 A. No.

8 Q. So it was at the deposition, just to be very clear, that
9 you received the confirmation that Mr. Jarrah was consuming and
10 possibly trafficking in child pornography?

11 MR. HANSEN: We have been over this issue multiple
12 times. Can we have her stop this?

13 THE COURT: I think that line of questioning is
14 improper based on my prior ruling. We are not asking whether
15 it was true or not what was said during the deposition. We
16 know that Mr. Fawcett has indicated that that was his
17 motivation. We know that the topic is out. We are not going
18 to talk about confirmations at depositions or answers that were
19 given.

20 BY MS. KIRSCH:

21 Q. Just the last question, Mr. Fawcett. You knew that your
22 acts and words had the effect of misleading the Kreindler
23 lawyers with respect to your leaking of the Jarrah transcript,
24 isn't that true?

25 A. I'm not sure which acts and words you're referring to.

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Fawcett - Redirect

1 Q. Whatever acts and words there were that related to the
2 topic.

3 A. I'm not quite sure how to answer that one.

4 Q. I am just asking whether you were aware that you were
5 misleading the Kreindler lawyers by your words, whether they
6 were dissembling or prevaricating, or any of the other words
7 that you used?

8 MR. HANSEN: Objection. Asked and answered. It's
9 putting words in the witness's mouth when he won't give the
10 answer she wants.

11 THE COURT: You can answer it.

12 A. I was not being honest with them.

13 MS. KIRSCH: Thank you very much, Mr. Fawcett.

14 MR. HANSEN: No further questions.

15 THE COURT: Mr. Fawcett, I have just a couple of
16 questions to clarify for my mind.

17 One question I have is, in your initial declaration
18 that you submitted to, I believe Mr. Pounian and Ms. Benett,
19 you indicated that you had sent the transcript via a
20 non-Kreindler e-mail address. What did you mean by that?

21 THE WITNESS: That's the ProtonMail.

22 THE COURT: Did they ask you what that e-mail address
23 was or what e-mail you used at that time?

24 THE WITNESS: Sorry?

25 THE COURT: Did either Ms. Benett or Mr. Pounian ask

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1 you, when you told them that you sent it via a non-Kreindler
2 e-mail address, did they ask you what that e-mail address was?

3 THE WITNESS: Yeah, I believe they did.

4 THE COURT: And did you explain to them what that
5 e-mail address was?

6 THE WITNESS: I think we put it into either the first
7 or second declaration.

8 THE COURT: I don't believe it's in the first
9 declaration. That's why I am asking.

10 THE WITNESS: Maybe it was in the second then.

11 THE COURT: Then I have a question that I hate to ask,
12 but since it's been made an issue. Can you tell me the age of
13 your children?

14 THE WITNESS: 21.

15 THE COURT: You have just one child?

16 THE WITNESS: They are twins.

17 THE COURT: Thank you. Anything further?

18 Mr. Fawcett, thank you very much. You are excused.

19 MR. RAPAWY: Your Honor, very briefly.

20 Your Honor, you asked us to meet and confer previously
21 on the subject of the previous exhibits, which I don't think
22 has been resolved yet.

23 THE COURT: Is Mr. Fawcett done?

24 Mr. Fawcett, you are excused.

25 (Witness excused)

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1 THE COURT: I did ask about the exhibit issue. Was
2 that you, Mr. Rapawy?

3 MR. RAPAWY: We have agreed to meet and confer and
4 exchange a list and get something to the court in the next
5 couple of days. At least based on my understanding of our
6 conversations, I think we should be able to resolve the issue
7 of the exhibits that went in before we started formally moving
8 for admission. If that's not the case, we can come back to the
9 court.

10 THE COURT: The court reporters, who are trying to do
11 their best job, have indicated that there is some confusion in
12 the record. I actually think it's a confusion that we all
13 could solve, but each lawyer said things like, turn to exhibit
14 tab 12, and you both have exhibit tab 12. I think we all know
15 what you're referring to. The court reporters are concerned
16 because they are good at their job, and they don't want to
17 submit a transcript that is unclear. But I am not sure we need
18 to burden them to try and match up what we were just calling
19 tab 7, and we know whether it's a Kreindler tab 7 or a KSA tab
20 7, and have them sort of redo the transcript. I think they
21 would like to get you a transcript. I think you have all
22 ordered it on an expedited basis. I don't know whether you
23 want to hold up the transcript creation in order to resolve
24 this issue and have the court reporters go back into the record
25 to correct or whether we can live with a transcript that may be

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1 more clear to us in the reading than it might be to the public.

2 MS. KIRSCH: For what it's worth, I think one process
3 could be, if they wanted to give us a rough transcript, we
4 could use that as a basis to both meet and confer on the
5 documents, and we could clean it up ourselves and make the
6 edits, if that's helpful. So we could give proper numbers or
7 tabs or do a better job of identifying the exhibits. We could
8 work off the rough so that we can do our meet-and-confer about
9 the documents that were offered.

10 THE COURT: I think that's fine. So long as the court
11 reporter doesn't feel like she has to go into the rough now and
12 try and recreate. We don't want her to have to do that.

13 MS. KIRSCH: We could take the rough and then we could
14 just provide the edits for better marking the exhibits. We can
15 do that for them.

16 THE COURT: OK.

17 Next question. Post-hearing briefing. I don't know
18 if you all want to meet and confer and discuss an appropriate
19 schedule. I don't know if you have thought about it already.
20 I think everybody's goal is to get proposed findings of fact
21 and conclusions of law to the court as quickly as possible.
22 It's my practice that when it's fresh it's best. I don't know
23 if you have thought about a proposed schedule. If you would
24 like to discuss that and get back to me later this week on a
25 proposal, I am happy to hear from you then, but I am happy to

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1 hear from you now.

2 MS. KIRSCH: Does your Honor contemplate just
3 simultaneous one brief from each side?

4 THE COURT: To be candid, I haven't contemplated so
5 much, only that it will happen. There is an argument that
6 having it be simultaneous makes sense. I suppose there is an
7 argument for having one side go first. I would like to try to
8 avoid having multiple rounds of briefings. I am happy to give
9 you all time to speak.

10 Mr. Kellogg, do you have a perspective?

11 MR. KELLOGG: Yes. Our thought was simultaneous
12 submissions in three weeks.

13 THE COURT: Ms. Kirsch, how does that sound?

14 MS. KIRSCH: That sounds fine.

15 THE COURT: That means everybody gets it in before
16 Thanksgiving.

17 MR. HAEFELE: Robert Haefele on behalf of the PEC. I
18 anticipate being as actively involved in the findings of fact
19 as we have been over the past few days, which means very
20 little. But I think the PEC would like to see findings of fact
21 before it's finalized.

22 THE COURT: Why don't we do the following. Why don't
23 we set the deadline for filing on Wednesday, the 24th of
24 November, which is the Wednesday before Thanksgiving. So
25 everybody can work really hard and then eat a lot of turkey.

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1 And I will ask that the parties coordinate with the PEC to at
2 least give them 48 hours to do a quick review to make sure
3 there are no issues. I don't anticipate there being issues.

4 MR. HAEFELE: I don't either, your Honor, but that
5 will be perfect for us.

6 THE COURT: So coordinate with the PEC, please. But
7 given the way the testimony has gone in, I don't anticipate
8 there being real issues here.

9 MR. KELLOGG: Your Honor, we would strongly object to
10 giving our submissions to the PEC before the filing with the
11 court.

12 THE COURT: Could you provide anything? I don't even
13 know what would be in there that would actually be PEC's work
14 product.

15 MR. KELLOGG: He can review them after each side
16 files. If they have concerns, they can submit them to the
17 court. It would be fundamentally unfair for us to have to
18 share our pleadings with them before we file.

19 MR. HAEFELE: I don't understand what the objection
20 would be. If there is some problem with the findings of fact
21 that are proposed that may be binding on this litigation, I
22 think the Plaintiffs' Executive Committee should have an
23 opportunity to make sure. Given how the testimony has gone in,
24 I don't anticipate there being any issue.

25 THE COURT: Why don't we do the following. Sorry to

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1 cut you off, sir. I do think it's a fair point, because if
2 their strategy is revealed, then the other side can counter it
3 in their filings. But what if we did something like the
4 following. That the parties exchange their final documents on
5 the 24th, and file them with the court sometime, maybe December
6 1st. So they are final copies, but if there are any redactions
7 that need to be raised, we can deal with it in that way. I
8 think that might protect everybody's interests. So the
9 exchange of the final documents Wednesday before Thanksgiving,
10 but I won't see them, which means everyone's Thanksgiving is
11 protected, and then we will file it with the court with any
12 redactions.

13 MR. KELLOGG: Can we file them under seal with the
14 court and then they can review them and propose redactions to
15 the court?

16 THE COURT: I think that's fine. I think that's
17 materially the same concept.

18 MR. GERBER: If I may?

19 THE COURT: Yes.

20 MR. GERBER: Mr. Fawcett obviously is not a party, but
21 we would like the opportunity to respond to the proposed
22 findings of fact and conclusions before the court issues its
23 final findings and conclusions. I am just not sure what the
24 court is envisioning in terms of our role in the briefing.

25 THE COURT: Let me take it under advisement and think

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1 about it and see what makes the most sense.

2 MR. GERBER: Just to be clear, the stakes for our
3 client are incredibly high, and before the court issues its
4 ruling, we would just like an opportunity in some way to have
5 input here, to be heard.

6 THE COURT: Why don't you think you could do that with
7 everybody else's filings?

8 MR. GERBER: I am sorry, your Honor.

9 Your Honor, I am envisioning in some form advocating
10 for our client.

11 THE COURT: I am wondering why that can't happen on
12 the 24th.

13 MR. GERBER: It certainly can. We are not a party. I
14 think the court referred to the parties' submissions. I don't
15 know if you were envisioning a simultaneous submission from us
16 as well.

17 THE COURT: If you want to be heard, I think that
18 would be the time to be heard.

19 Anything further from anyone?

20 MS. KIRSCH: No, your Honor.

21 THE COURT: All right. Well, on a personal matter, I
22 hope everybody is doing OK in COVID times. I know I see all of
23 you often, and we haven't seen you in a long time. I am sorry
24 for the reason that we are here, but I hope everybody is safe
25 and their family is safe. And I hope everybody felt like the

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1 court did a good job with respect to our COVID protocols. I
2 know we have been really careful and we are trying to be sort
3 of a leader in the federal system on this, so I hope everyone
4 felt like they were well taken care of.

5 With that, we are done.

6 MS. KIRSCH: Just to clarify, we are going to do one
7 set of briefs simultaneously, filing under seal on November 24,
8 and allowing the PECs to have a look for any redactions by
9 December 1st. And that's all the briefing that we are doing.

10 THE COURT: Correct.

11 MS. KIRSCH: OK.

12 THE COURT: Thank you, everybody. We are adjourned.

13 (Adjourned)
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1	278
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2	281
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3	283
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4	284
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5	286
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8	287
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98	308
108	347
109	349
110	352
118	356
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58	359
134	428
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